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March 23,

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 181.

THE STEAMSHIP CITY OF WASHINGTON, HER TACKLE, &c., THE LIVERPOOL, NEW YORK & PHILADELPHIA STEAMSHIP COMPANY, CLAIMANTS, APPELLANTS,

vs.

PETER R. BAILLIE, WILLIAM H. McGEE, JOHN HOBBS, THOMAS AITKEN, FREDERICK V. BOUDIER, MARY A. CLARK, WILLIAM A. GRIFFITHS, JOHN MAHONEY, JOHN FRANCIS, JEREMIAH CARNEY, MICHAEL NEILAND, LUTHER R. MURPHY, AND THEODORE C. ROBINSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED MAY 21, 1874.

Affirmed
Mr Justice Clifford



SUPREME COURT OF THE UNITED STATES.

No. 181.

THE STEAMSHIP CITY OF WASHINGTON, HER TACKLE, &c., THE LIVERPOOL, NEW YORK & PHILADELPHIA STEAMSHIP COMPANY, CLAIMANTS, APPELLANTS,

VS.

PETER R. BAILLIE, WILLIAM H. McGEE, JOHN HOBBS, THOMAS AITKEN, FREDERICK V. BOUDIER, MARY A. CLARK, WILLIAM A. GRIFFITHS, JOHN MAHONEY, JOHN FRANCIS, JEREMIAH CARNEY, MICHAEL NEILAND, LUTHER R. MURPHY, AND THEODORE C. ROBINSON.

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1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United State court-rooms, in the city of Brooklyn, on the third day of April, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the honorable Charles L. Benedict, district judge.

PETER R. BALLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, ECT.

The libellants appear and file their libel against the above-named vessel in the words and figures following, to wit:

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel and complaint of Peter R. Ballie, Wm. H. McGee, John Hobbs, Thomas Aiken, Frederick V. Baudier, and Mary A. Clark, respectively residing in the State of New York, owners of the pilot-
2 boat John D. Jones, against the Steamship City of Washington, her tackle, apparel, and engines, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, respectfully shows:

First. That the said steamship City of Washington is now lying at the port of New York, within the eastern district of New York, and within the jurisdiction of this honorable court.

Second. That, at the time hereinafter mentioned, your libellants were the owners of the pilot-boat John D. Jones, which was then employed by them as a pilot-boat in the harbor of New York and adjacent waters, for which she was duly licensed, engaged among other things in the carrying of pilots from the port of New York out to and beyond Sandy Hook for the purpose of meeting vessels bound to said port of New York, and piloting the same into said port; that, on the night of Tuesday, the twenty-eighth of March, 1871, the said pilot-boat was lying about two hundred and seventy miles east of Sandy Hook with her bow to the wind, which at that time was about northwest-by-north, and blowing but moderately; that, during the said night, the weather was at times stormy and snowy, but during the greater portion of the time the night was clear, so that objects could be discerned with the naked eye for miles, and that such was the case during the occurrences hereinafter stated; that, during all of said night and during the time hereinafter referred to, the said pilot-boat was in every respect tight, staunch, and seaworthy; that, during all such time, she had her lights properly set and burning brightly, and was well and sufficiently manned and equipped, having, in addition to her regular crew, a number of duly and regularly licensed pilots.

3 Third. That, at about fifteen minutes after eleven o'clock on said night, and while said pilot-boat was lying as before stated, her watch reported a vessel which afterwards proved to be the said steamship City of Washington, then distant about four miles from said pilot-boat, in a direction about south-by-east, and heading towards the westward; that thereupon those on board said pilot-boat burned a flash-light, which is the usual signal to indicate that a vessel is a pilot-boat, and continued burning flash-lights as rapidly as possible until the collision hereinafter alleged; that those on board of said steamship burned a blue-light in response to the first flash-light of said pilot-boat, which was the usual and proper signal to indicate; and which did indicate that

the boat of your libellants was recognized as a pilot-boat, and the services of one of her pilots desired by said steamship, and thereupon the course of said steamship was changed to the north or north-northwest heading for the pilot-boat, while at the same time the latter was put under way, and headed to the southward and westward, which brought the green-light of said steamship in view from said pilot-boat; that afterwards, and when the two vessels were about half a mile apart, the helm of the said steamship was ported, which brought all her lights into view, and indicated that she would pass under the stern of the pilot-boat, and as the vessels approached each other the red-light and mast-head light of the steamship only were visible to the pilot-boat; that when the two vessels were five hundred yards apart and the pilot-boat of your libellant was going from three to three and a half knots an hour her yawl was lowered, and one of the pilots made off in it to board the said steamship, when the said steamship starboarded her helm, which showed her green-light, and made her bow head di-
4 rectly for said pilot-boat; that those in the said yawl immediately shouted to the master of said steamship to back, which was not done, while the helm of said pilot-boat was put hard a-port, and everything that lay in their power was done to avoid a collision, notwithstanding which the said steamship struck the said pilot-boat, bow on, with great force abreast of the mainmast, causing the said pilot-boat to sink in fifteen minutes, whereby she became a total loss to your libellants.

Fourth. That said collision was not caused by any fault on the part of said pilot-boat, or of those on board or in command of her, but, on the contrary, was caused solely by the fault and negligence and the improper and unseamanlike conduct of those on board of and in charge of said steamship.

Fifth. That, by reason of the said collision, your libellants sustained damage in a large sum, that is to say, in the full value of said pilot-boat, which was the sum of sixteen thousand dollars, and in addition there was lost by means of said collision property and personal effects belonging to the crew and pilot on board of her severally which amounted to the sum of three thousand eight hundred dollars, which amount your libellants are authorized to include in this libel, making the total amount of damage resulting from such collision the sum of nineteen thousand eight hundred dollars.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellants pray that process in due form of law, according to the course and practice of this honorable court in case
5 of admiralty and maritime jurisdiction, may issue against the said steamship City of Washington, her tackle, apparel, furniture, and engines; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree in favor of your libellants for the damages sustained as aforesaid, with their costs, and that the said steamship may be condemned and sold to pay the same, and that otherwise law and justice in the premises may be administered.

JOHN HOBBS.

SCUDDER & CARTER,
Proctors for Libellants.

Sworn to before me this 3d day of April, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) U. S. court, E. D. of New York. Peter R. Baillie and others vs. the Steamship City of Washington, her tackle, etc. Libel. Scudder & Carter, libellants' proctors. Filed April 3d, 1871.

6 U. S. district court, eastern district of New York.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, &C., &C., &C.

It is hereby consented that Theodore C. Robinson, William A. Griffiths, L. R. Murphy, John Francis, Jeremiah Carney, Michael Neiland, and John Mahoney be joined as libellants herein, and that an order or decree herein be entered to that effect.

Dated N. Y., January 23d, 1873.

PLATT, GERARD & BUCKLEY,
Cl'mts' Proctors.
SCUDDER & CARTER,
Libellants' Proctors.

7 (Endorsed:) U. S. dist. court, E. dist. of New York. Peter R. Baillie et al. vs. the S. S. City of Washington, etc. Consent to amend libel. Scudder & Carter, libellants' proctors. Filed January 27th, 1873.

At a stated term of the United States district court for the eastern district of New York, held in said district, at the United States district court-rooms, at No. 189 Montague street, Brooklyn, on the 27th day of January, 1873:

Present, Hon. Charles L. Benedict judge.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, HER tackle, etc.

On reading and filing the annexed consent, and on motion of Scudder & Carter, proctors for libellant—

8 It is hereby ordered and decreed that the libel herein be amended so as to include therein Theodore C. Robinson, William A. Griffiths, L. R. Murphy, John Francis, Jeremiah Carney, Michael Neiland, and John Mahoney, as co-libellants.

CHARLES L. BENEDICT.

(Endorsed:) U. S. district court, eastern district of New York. Peter R. Baillie et al. vs. the Steamship City of Washington, etc. Order amending libel. Scudder & Carter, proctors for libellants. Filed January 27th, 1873.

Stipulation for libellants' costs.—Entered into pursuant to the rules and practice of this court.—Filed the 3d day of April, 1871.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the third day of April

9 in the year of our Lord one thousand eight hundred and seventy-one, by Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, and others, against the Steamship City of Washington, her tackel, apparel, furniture, and engines, for the reasons and causes in the said libel mentioned, and praying that said steamer be condemned and sold to pay, etc., and the said libellants and Henry J. Scudder, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

JOHN HOBBS AND OTHERS.
HENRY J. SCUDDER.

Taken and acknowledged this 3d day of April, 1871, before me.
EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry J. Scudder, party to the above stipulation, being duly
10 sworn, doth depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HENRY J. SCUDDER.

Sworn to this 3d day of April, 1871, before me.
EDWARD L. OWEN,
U. S. Commissioner.

Recorded the 3d day of April, 1871.
SAMUEL T. JONES, *Clerk.*

EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States for the eastern district of New York, on the 3d day of April, in the year of our Lord one thousand eight hundred and seventy-one, by Peter R. Baillie, Wm. McGee, John Hobbs, Thomas Aitken, Frederick V. Baudier, and Mary A. Clark, against the Steamship City of Washington, her tackle, &c., in a cause of collision, damages $19,800, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made,
11 and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamship or vessel, her tackle, &c., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamship or

vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the 19th day of April, 1871, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premisses do you then and there make return thereof, together with this writ.

Witness the honorable Charles L. Benedict, judge of said court, at the city of Brooklyn, in the eastern district of New York, this 3d day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth.

SAMUEL T. JONES, *Clerk.*
SCUDDER & CARTER,
Proctors for Libellant.

12 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Tuesday, the fourth day of April, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the honorable Charles L. Benedict, district judge.

PETER R. BAILLIE, WILLIAM H. MCGEE, JOHN HOBBS, THOS. AITKEN, FREDERICK V. BAUDIER, AND MARY A. CLARK, owners of pilot-boat JOHN D. JONES,
agst.
THE STEAMSHIP CITY OF WASHINGTON, ETC.

And now, John G. Dale, intervening as agent for the interest of the Liverpool, New York and Philadelphia Steamship Company in the said steamship, appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Peter R. Baillie and others, owners of the pilot-boat John D. Jones, and the said John G. Dale, avers that he is in possession of the said steamship at the time of the attachment thereof, and that the persons above named are the
13 true and bona-fide owners of the said steamship, and that no other person is the owner thereof; and the said company is the true and lawful bailee thereof as owner, wherefore they pray to defend accordingly.

Liverpool, New York and Phila. S. S. Co.,
By JOHN G. DALE, *Agent.*

PLATT, GERARD & BUCKLEY,
Proctors for Claimants.

EASTERN DISTRICT OF NEW YORK, *ss:*

John G. Dale, being duly sworn, deposes and says that he resides in the city of New York, that he is the agent of the Liverpool, New York and Philadelphia S. S. Co., above named; that the owners of said steamship reside in England, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship, and that the said claim is true of the knowledge of this deponent, except as to the

matters therein stated on information and belief, and as to such matter he believes it to be true.

JOHN G. DALE.

Sworn to and subscribed this 4th day of April, A. D., 1871, before me.
EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) United States district court, for the eastern district of New York. Peter R. Ballie et als. vs. the Steamship City of Washington, her tackle, &c. Platt Gerard & Buckley, proctors for claimant. Claim of owner by agent. Filed the 4th day of April, 1871.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 4th day of April, 1871.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court, on the second day of April, in the year of our Lord one thousand eight hundred and seventy-one, by Peter R. Baillie, William H. McGee, and others, against the Steamship City of Washington, her engine, tackle, apparel, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship be condemned and sold to pay, etc., and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or their sureties execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas also a claim has been filed in said cause by the Liverpool, New York and Philadelphia Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

Liverpool, New York and Phila. S. S. Co.,
By JOHN G. DALE, *Agent.*
JOHN E. WALSH.
P. H. WALSH.

Taken and acknowledged this 4th day of April, 1871, before me.
EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Peter H. Walsh and John E. Walsh, parties to the above stipulation, being duly sworn, doth depose and say, and each for himself says, that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

P. H. WALSH,
JOHN E. WALSH.

Sworn to this 4th day of April, 1871, before me.
EDWARD L. OWEN,
U. S. Commissioner.

Recorded the 4th day of April, 1871.
SAMUEL T. JONES, *Clerk.*

16 District court of the United States of America for the eastern district of New York.

[Filed the 4th day of April, 1871.]

Know all men by these presents that we, Liverpool, New York and Philadelphia, Steamship Company, by John G. Dale, Peter H. Walsh, and John E. Walsh, are held and firmly bound unto Samuel R. Harlow, marshal of the United States for the eastern district of New York, in the sum of forty thousand dollars, to be paid to the said S. R. Harlow, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 4th day of April, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas a libel has been filed in the district court of the United States for the eastern district of New York on the third day of April, in the year of our Lord one thousand eight hundred and seventy-one, by Peter R. Baillie et al., libellants, against the Steamship City of Washington, her engines, &c., for the sum of nineteen thousand eight hundred dollars, on which process of attachment has issued, but the service thereof waived, and the said steamship is in custody of the marshal under the said attachment, and the Liverpool, New York and Philadelphia Steamship Company has appealed for a discharge of said steamship from the custody of the marshal, and has filed a claim claiming the said steamship as owner, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court:

17 Now, therefore, the condition of this obligation is such, that if the above-bounden the Liverpool, New York and Philadelphia Steamship Company, by John G. Dale, Peter H. Walsh, and John E. Walsh, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LIVERPOOL, NEW YORK AND PHILA. S. S. CO.,
By JOHN G. DALE, *Agent.* [L. S.]
PETER H. WALSH. [L. S.]
JOHN E. WALSH. [L. S.]

Sealed and delivered, and taken and acknowledged, this 4th day of April, 1871, before me.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John E. Walsh and Peter H. Walsh, being duly sworn, depose and say, and each for himself says, that he is worth the sum of forty thousand dollars over and above all his just debts and liabilities.

P. H. WALSH.
JOHN E. WALSH.

Sworn to this 4th day of April, A. D. 1871, before me.

EDWARD L. OWEN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 4th day of April, 1871.

SCUDDER & CARTER,
Libellants' Proctor.

Recorded the 4th day of April, 1871.

18 The sufficiency of the sureties on the within bond being approved, we stipulate that process shall not issue against the steamship named therein.

N. Y., April 4th, 1871.

SCUDDER & CARTER,
Proctors for Libellants.
PLATT, GERARD & BUCKLEY,
Claimants' Proctors.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The claim and answer of the Liverpool, New York Philadelphia Steamship Company intervening for their interest in the steamship City of Washington, her tackle, apparel, and furniture, to the libel of Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Frederick Baudier, and Mary A. Clark, alleges as follows:

First. That these respondents claim the said steamship, her tackle, apparel, &c.

Second. That they are ignorant of the matters in the second article of the libel stated as regards the ownership and employment by libellants of the boat named John D. Jones, but believe that said boat at the time hereinafter stated was engaged in the carrying of pilots.

19 Third. That as to the allegations in the said libel in the rest of the second article thereof contained these claimants are ignorant, except that they allege that the weather during the night of the twenty-eighth of March, eighteen hundred and seventy-one, was stormy and snowy and attended with squalls, and deny that at any time in the said night at the times hereinafter set forth, and up to the time of the collision in the libel referred to, was the night so clear that objects could be discerned with the naked eye for miles; and aver that during the period of the happening of the events in the libel stated, and prior thereto, *that* the weather was thick and foggy, so that objects, unless quite near, could not be seen with the naked eye, with the exception of lights.

And respondents are informed and aver, on information and belief, that the said boat, the John D. Jones, was not at the time of the occurrences in the libel stated well and sufficiently manned and equipped, nor tight, staunch, and seaworthy, or sufficiently strong for the purposes for which she was used.

Fourth. That, as to the third article in the libel contained, these respondents deny the same, except as in this article alleged and set forth.

That the said steamship towards midnight of Tuesday, the twenty-eighth day of March last, was proceeding on her course towards the port of New York, and was about two hundred and thirty miles from Sandy Hook, about longitude 68 deg. west, steering on a course about west-by-north; that the wind was blowing a fresh breeze about north-west-by-north.

That *that* the said steamship had all her lights shining brightly and located in their position.

That the said steamer had proper lookouts, and two men on the
20 bridge besides an officer; that, while so proceeding on her course, those navigating said steamship made out a light on her starboard beam bearing away to the north; that the vessel bearing said light showed a flash-light or pilot's signal; that thereupon said steamship bore away to the north-by-west, so as to approach said boat, keeping her on the starboard bow.

That thereupon the engineer of said steamship was telegraphed to

stand by. That at that time only the lights of said vessel were visible, and her sails and hulls were obscured from view by the thickness of the night.

That thereupon the said steamship's engine slowed, and she moved slowly toward the direction of said boat, keeping her off the starboard bow; that a light was thereupon seen by those on the steamer from the yawl of said boat which started therefrom. That said steamship thereupon showed a globe-light over the starboard side to indicate the position of her ladder.

That thereupon the engine of said steamer was stopped and backed at half speed, and her helm was starboarded, so as to put her head in a direction quite away from said boat, which starboarding of the helm took place from three to five minutes before the collision.

That the said pilot-boat soon thereafter, by reason of the unskilful and improper navigation of those on board, placed herself directly in front of said steamer, and was made out from said steamship, standing across the steamship's bow, whereupon said steamship was backed at full speed; but in spite of all effort to the contrary, the said boat came foul of the jib-boom or bowsprit of said steamship, the said bowsprit catching her mainmast by the rigging, and her hull thereafter collided with the bow of said steamship.

21 That the said collision did not cut down the said boat but merely occasioned a concussion, which apparently caused the subsequent sinking of the vessel in about ten or fifteen minutes after the collision, said steamship not moving forward but backing clear from said colliding boat.

That the headway of the said steamship was not the occasion of the collision, but the weight of the ship rising by the heave of the sea and falling against the slight and insufficient hull of the pilot-boat caused the staving in of her top sides, and her subsequent leaking and filling.

Fifth. The libellants aver that, by reason of the neglect of the said pilot-boat, and by reason of the erroneous and unusual navigation of said pilot-boat, and by the fault and negligence of those on board, and by the improper and unseamanlike conduct and want of ordinary care and prudence, and deviation from the usual rules and customs of navigation under the circumstances on the part of those on board of and in charge of said pilot-boat, whereby those on board said steamship were misled and deceived as to the position and change of position of said pilot-boat, the said collision was occasioned.

Sixth. These respondents deny that said collision and alleged loss was occasioned by the default, negligence, or improper and unseamanlike conduct of those on board of said steamer.

That your respondents are ignorant of the matters in the fifth article of said libel contained, and therefore deny the same.

22 Wherefore these respondents pray that they may be hence dismissed, and that their costs and expenses may be decreed to them.

The Liverpool, New York & Phila. S. S. Co.,
By JOHN G. DALE, *Agent.*

PLATT, GERARD & BUCKLEY,
Claimants' Proctors.

J. W. GERARD, Jr.,
Advocate.

Sworn to before me this 21st day of April, 1871.

[NOTARIAL SEAL.] HENRY F. LIPPOLD,
Notary Public N. Y. County.

(Endorsed:) U. S. district court, E. D. of New York. Peter R. Baillie et al. agst. the Steamship City of Washington, &c. Answer. Platt, Gerard & Buckley, claimants' proc's. Filed April 22d, 1871.

23 United States district court, eastern district of New York.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON. } Before Judge C. L. Benedict. Nov. 16th, 1871.

Appearances: Scudder & Carter, for libellants. Mr. Scudder, advocate; Platt, Gerard & Buckley, for claimants. Mr. Gerard, jr., advocate.

Hearing ordered. Both sides ready.

Libel read by Mr. Scudder.

Answer read by Mr. Gerard, jr.

PETER R. BAILLIE called and sworn for libellants.

Direct examination by Mr. Scudder:

Q. What is your age and occupation?

A. Forty years of age, and am a Sandy Hook pilot.

Q. What was your business in March, 1871?

A. Sandy Hook pilot.

Q. And in what boat?

A. The J. D. Jones, No. 15.

24 Q. Were you a pilot on her—in the boat?

A. I was, sir.

Q. On the 28th of March where were you?

A. On board the boat, in longitude 68 deg. 10 min., and latitude 40 deg. 50 min. to 41 deg.

Q. About 11 o'clock, that night, what was the condition of the weather, and what had it been?

A. Been blowing very hard that day, but moderated down a little. It was a moderate good breeze; it wasn't blowing, nor it wasn't calm; a good breeze of wind, so that you could manage a vessel in it.

Q. How was the pilot-boat laying at the time you speak of?

A. With our jib-sheet to the windward on the starboard tack, the wind northwest-by-north, when one of the boys reported a light.

Q. Did you see the light yourself?

A. I saw it a little later; yes. It bore about south-by-east of us, about four to five miles off, in the neighborhood of five miles—about four and a half miles south-by-east from our ship. I give you the bearings from our boat, south-by-east, right off our port quarter, sir.

Q. What sail had you on the schooner at that time?

A. Three close-reefed sails; we call them the foresail, mainsail, and jib.

Q. You were cruising for steamers or ships?

A. Yes, sir; or anything.

Q. After you made that light, what did you do?

A. Put the helm up and fell away, and while the boat was falling away we showed her our torch-light immediately.

Q. For the purpose of showing the steamer you were a pilot-boat?

A. Yes, sir.

Q. Did you exhibit your flash-light?

25 A. Yes, sir; and another right on top of it again, and then they showed a blue-light.

Q. What does the blue-light signify?

A. That he had seen our light, and knew what we were, and was coming for us.

Q. Go slowly, and describe everything that took place from that time down to the time you arrived in New York. How was you bearing when you saw the blue-light?

A. About west-by-north, sir. I kept the boat away and showed my torches, and the steamer answered me with his blue-light. We kept our course to the southward and westward, and as we went along that way and continued on our southward and westerly course we made the steamer's lights. We first made his green-light, and shortly after that we made all three lights, heading directly at us. We saw his starboard light first, his green-light, and then we saw all three lights, indicating that the ship was coming directly at us. He continued on that course until he got, I should judge, about a quarter of a mile from us, when he then ported his wheel, which closed in his green light, showing us his masthead-light and red light, his bright light indicating that he was coming across our stern. He even showed his port so much that we could see the glimmers of his sidelights in the windows on his port side, showing that he was some distance across our stern. We were still showing him our torches, showing him our position, how we were going then. We got within five or six lengths—not over four lengths—of each other. We dropped our yawl to him, with a lantern in it, and a pilot and two of the hands. We was then on the ship's port bow. Before
the yawl got to the ship, as near as we could judge, he suddenly
26 starboards his helm. The ship's way didn't stop at all. I saw the fact of what was likely to transpire if he continued on that way. We could see the white water under her bow, and a big black mountain coming at us, and so I shoved the helm down, knowing that I couldn't possibly get clear of him, and so let him shave clear of us if he could. He then struck our mainmast with his bowsprit. I was standing in the cockpit, and I jumped out. He threw our boat over so that the water ran over our deck, and one of the spars fell down and knocked me overboard.

Q. (By the Court.) On which side of you did she strike?

A. On the port side, about abreast or abaft of the mainmast. His stem took us—struck us on an angle.

Direct resumed:

Q. Which way?

A. Towards us, going with us, on an angle towards our bow. His stem went into the hull abaft the mainmast, and his bowsprit struck the mainmast.

Q. What effect did it have on the mainmast?

A. It broke the mainmast into three pieces.

Q. How far do you judge that the steamer went into the pilot-boat?

A. From 5 to 6 feet, driving her over to the windward so far that the water came down our weather-hatches, and I had no foot-hold on deck, and was standing almost on her side, when this spar fell from aloft and knocked me overboard, and I would have been drowned if it hadn't been for the rigging which fell overboard with me. She was driving the boat through the water from 4 to 5 knots as she laid right under her bows.

Q. Did you get aboard the pilot-boat again?

27 A. Yes, sir. I hauled myself up hand over hand, and the boys helped me on board. Two boys and the steward were left on board the boat. I immediately went down into the cabin, and the whole

port-side of the cabin was drove into the cabin—the berths and everything. I went to try to get through to Hobb's berth.

Q. Any water in her at that time?

A. The water then was up to the floor. I tried to get Hobb's watch and things, but I couldn't get them. Immediately after, finding I couldn't get anything, I run forward and then ran back again to see if I could see the steamer. By that time the water had risen from 6 to 8 inches on the floor of the boat. I then immediately ran on deck, and, with the assistance of the others, got on board the steamship. I was almost perished, as you may imagine, such a night as that was.

Q. How long do you think, from the time the steamer struck you until the pilot-boat sunk?

A. Not over fifteen minutes.

Q. Did your vessel, when you put her helm hard down, change her course any; and, if so, how much?

A. Yes; she changed her course. I didn't look particularly at the compass, but the boat was coming to pretty fast. She must have changed from three to four points.

Q. If you had not put the helm hard down what would have been the effect?

A. She would have turned the boat right over.

(Objected to. Allowed.)

Q. How fast were you going through the water at the time that the ship struck you?

A. From three to four knots—very nigh four knots. We had perfect management of the boat. I had charge of the helm myself, and
28 I had perfect management of the boat. If the steamship had kept its course, instead of putting his helm to starboard, he wouldn't have struck us; he would have passed under our stern, half a ship's length astern of us, and probably more.

Q. What is the usual way for a pilot-boat to approach a steamer for the purpose of putting a pilot on board of her?

A. When a steamer hauls for us, we get as directly ahead of her as possible, and he hauls directly at us; then he makes either side his lee side, if he is coming head to wind to take a pilot on board on the lee side, which he indicates by a bright light, by a lantern—a white-light—hung over the side, down at the water.

Q. Why do you get ahead of him; what is the purpose of it?

A. It is a customary thing; we can then see either side of the ship. A steamship is supposed, and always do, with very few exceptions, stop before they get to the boat, and indicate the lee side, so that we can board her with a small boat. They almost always stop the ship, with very few exceptions.

Q. Was there any fog that night?

A. No, sir; no fog. Wind northwest-by-north; wind very cold. I would like to see a fog under those circumstances—snowing a little like it is to-day, a few minutes at a time. After the ship struck us there was one of those snow-squalls struck us.

Cross-examination by Mr. Gerard:

Q. How long had you owned this boat, Mr. Baillie?

A. Eight years; pretty near nine years.

Q. Whom did you get her from?

29 A. I built her, sir; I was one of the builders and superintended her building. She was then but eight or nine years old.

Q. Had she not met with some acci lent not long before this to her hull?

A. Not of any consequence.
Q. What was it?
A. She struck on her bottom once.
Q. How long before?
A. About two months, I guess it was.
Q. And had been repaired since?
A. Yes, sir, thoroughly repaired not over three weeks before the accident.
Q. What was the nature of the accident?
A. Nothing very serious; just crumbled her copper on the bottom a little.
Q. Was the hull stove in, any part of it?
A. No, sir.
Q. How many people were on board the piliot-boat at the time of this trouble or disaster?
A. Mr. Hobbs, Griffiths, and myself. There was eight aboard of her; six aboard the schooner and three in the boat--nine instead of eight.
Q. What was the usual complement of that boat's pilots?
A. Sometimes there is only one pilot there.
Q. How many pilots belonged to that boat?
A. Seven.
Q. And how many of a crew did you have besides the pilots?
A. Four, and the boat-keeper and steward—six forward, four hands. I made a mistake; there was nine aboard the boat, instead of six, at the time of the collision; three pilots and six hands forward, which made nine
Q. How many of these men were on the yawl?
30 A. Two hands and one pilot went in the yawl.
Q. That left how many men on board?
A. Nine.
Q. That left four men on board and two pilots, and that makes six. How many were on board the boat at the time of this collision- the pilotboat, irrespective of the yawl?
A. There were four deck-hands and the boat-keeper is five, and the steward was six. This was before the collision; and four pilots, that was ten.
Q. At the collision, how many?
A. There was three hands gone—one pilot and two hands gone in the yawl to board the ship. That left on board seven, consisting——
Q. How many pilots on board at the time you were struck?
A. Three, and one in the yawl—four altogether.
Q. At the time you first saw the light of the steamer, where were these different people? What were they doing on board your boat?
A. All below except one of the hands and myself. The pilots were all sitting in the cabin.
Q. The hands asleep?
A. I didn't go forward to see whether they were asleep. The hands had turned in.
Q. And what watch was there on deck?
A. The customary watch—one of the pilots and one of the hands.
Q. Where were you?
A. I was on deck.
Q. And who was at the wheel?
A. Nobody at the wheel; the helm was lashed, the boat hove to with the jib-sheet to the windward.

31 Q. When you sighted the steamer who notified the fact to the parties on board? Did the boy, or who was the first one that did it?

A. I was standing in the cockpit or the companion way, and the man on the quarter-deck saw the light.

Q. What did he report?

A. He told me there was a light on the lee quarter, and I looked out and saw it.

Q. What did you do?

A. I put the helm up and fell away more.

Q. Unlashed the helm and put it up?

A. Yes, and told them to show the torch-light.

Q. In what way did you put the helm up?

A. With my hands; shoved it to starboard.

Q. Do it alone?

A. Yes; I didn't require any assistance.

Q. Didn't call anybody else up?

A. No, sir; not to put the helm up. I did immediately after.

Q. How soon after?

A. It might have been two minutes, I couldn't say exactly; and as soon as he could he showed them the torch-light.

Q. Who showed the torch-light?

A. He showed it himself—the one man that was on deck showed it to them to the leeward of the mainsail.

Q. What sails did you hoist? Any different ones?

A. No, sir; the same sails—three close-reefed sails.

Q. (By the Court.) You fell away on which tack?

A. On the starboard tack, when the boat paid off.

Cross resumed:

Q. When you starboarded your helm, what course were you on then?

A. About southwest, sir.

Q. And how heading as respects the steamer?

32 A. The steamer was on my lee bow, coming up in this way. If the steamer had kept her course, she would have headed directly at us, and we would have crossed him. I was about from southwest to southwest-by-west when I starboard my helm with the steamer on our lee bow, from five to six points.

Q. Now at that time what lights did you see from the steamer when you starboarded your helm?

A. I didn't look particularly. I just saw her masthead-light.

Q. Now, you kept on this course up to what time, that you have just described?

A. Up to the time we found the steamer had starboarded his helm.

Q. What did you do then?

A. Port the helm down hard a-port.

Q. At that time, who was on deck with you?

A. All hands on board the boat. The boys, they were standing on deck.

Q. (By the Court.) When you ported your helm, what effect did that have?

A. She came to immediately; when we ported, it drew so hard, that we came up in the neighborhood of 4 points—about west-by-north—from west to west-by-north.

Cross resumed:

Q. Then you were still on the starboard side of the steamer?

A. No, sir; we were directly ahead of her then, when he starboarded his helm.

Q. Was the yawl then put out?

A. Our yawl was then abreast of the steamer when we put the helm down, as near as I could tell. I don't know his position.

Q. The yawl had been off some time?

A. Yes, it had been away from the boat some time.

33 Q. Now, what was the next change or maneuver on board of your boat after you came up to the wind?

A. We were perfectly powerless to do anything. The next thing was the crash, that was the next maneuver—the steamer done all the rest of it; all we did was to stand and take it. We became perfectly powerless when he starboarded his helm.

Q. Were you still in motion?

A. We were still in motion all the time; we kept going through the water all the time.

Q. At about what rate?

A. From 3 to 4 knots; sometimes she would go faster than that, and sometimes not more than 3 knots, just as the puffs would strike us; the wind was puffy.

Q. The wind was such and the state of the water was such that you could very easily navigate your boat; there wasn't any trouble about that?

A. No, sir; we did navigate her, had her under thorough charge.

Q. How near was the steamer to you, so far as you can judge by her lights, when you dropped your yawl?

A. I should judge she might have been two ships' length, probably more.

Q. On which side did you drop the yawl?

A. From the port side.

Q. And you think the steamer was only about two steamers' lengths off?

A. Yes, sir; about that.

Q. In reference to the steamer, how were you heading at the time you dropped the yawl? What was your position as regards the steamer? How did the steamer bear from you at the time the yawl-boat left you?

34 A. The steamer then was forward of our beam, or near our beam, as near as I can remember; on our port beam, heading then across our stern, with his port light in view and his starboard light shut in.

Q. Could you see the steamer yourself?

A. Yes, sir; could see the hull of the steamer, and saw the water under her bow—the foam under her bow.

Q. What lights did you then see, when you dropped your yawl?

A. (Second answer preceding repeated.)

Q. What was the maneuvering on you' boat after you dropped your yawl, as regards the position you were to take with the steamer? Did you make a maneuver to cross her bow?

A. We were across her bow.

Q. And you had the steamer in view the whole time?

A. Yes; I don't say the whole time. You asked me if the hull was in sight from the time we dropped the yawl, and I say yes. Her hull was in sight when we dropped the yawl—plainly in sight. I could see her.

Q. Were you under full way at that time?

A. Sometimes from 3 to 5 knots, sometimes 5, and sometimes 3, just as the puffs would strike us; we would go ahead sometimes, and then loiter again.

Q. (By the Court:) It was the fault of the steamer's hard a-starboarding?

A. Yes, sir.

Q. (By the same.) You consider that the cause of the accident was her starboarding?

A. Yes, sir; after porting his wheel and coming across our stern, I was then in the act of keeping the boat——

Cross resumed:

Q. How far off was you when you think the steamer starboarded her helm?

35 A. The steamer was probably a length or a length and a half when she starboarded. I couldn't tell the distance exactly at the time; probably a length, and probably a little more.

Q. How long before the steamer starboarded her helm was she plainly visible—her hull?

A. I couldn't say.

Q. Five or ten minutes before?

A. No, sir.

Q. Five minutes before?

A. It might have been five at the most. I couldn't measure time that way. It was a few minutes; I won't pretend to say how many.

Q. It was several minutes before she starboarded her helm?

A. It might have been three or four minutes when we see her hull plainly; we couldn't see it plain when we first made it—just a black mass coming out of the water and coming towards us.

Q. Why couldn't you see the steamer's hull before?

A. It was too dark.

Q. Sleet in the air?

A. No. There was no such thing; there had been.

Q. If you could see at a quarter past 11, why not at 11?

A. Because she hadn't come in sight yet; we made that light from the deck; we couldn't see the hull, then; we can see a steamer's masts in the day-time before we see her hull.

Q. While she was approaching you, wasn't she obscured by the state of the weather?

A. No, sir; it was the darkness.

Q. Had there been a sleet and snow storm that night?

A. It was sleeting occasionally.

Q. Didn't a storm occur immediately after the collision?

A. Yes, sir; a snow-squall came.

36 Q. Wasn't that brewing a short time before and during this maneuvering?

A. I didn't take notice of that.

Cross-examination by Mr. Owens:

Q. All this time you saw which way the steamer was heading?

A. Yes, sir.

Q. When you dropped your yawl you were heading to cross her bows?

A. No, sir; we were heading from her; we was then crossing her bows.

Q. It would be crossing her line of direction?

A. We were across the ship's bows; we were on her port bow then.

Q. That is, you had passed her entirely?

A. The ship had ported her wheel, and made his starboard side his lee side, which brought us on his port bow; we were on his port bow at the time we dropped the yawl.

Q. Did the yawl have to haul around his port to get around on the starboard side? How much were you on her port bow?

A. We were probably a point or a half a point, just clear of his head slightly, on his port bow, just enough to say that we were not directly ahead of them.

Q. Why didn't you drop your yawl before you got so far forward—abreast the bow?

A. We try to drop the yawl as near ahead of the ship as we can.

Q. And you dropped it on the port bow?

A. About a half a point; just enough to say we were clear of the ship's stem.

37 Q. At that time why didn't you put your helm up and come around under the stern of the ship?

A. I wanted to give the yawl time enough to get on the ship. There was plenty of sea-room. But we have a system of boarding vessels which people on shore don't understand.

Q. Was it proper to cross the bow of the vessel under such circumstances?

A. We didn't cross her bow.

Q. Your action and her's together brought you ahead of her?

A. We were ahead of her sometimes, sir. We could have crossed the ship by our own action, as we would have done and could have done if we saw fit. If the ship had stopped, we could have done all the sailing ourselves and boarded her on either side; he would have made his lee.

Q. Do you mean to state here in regard to the lights what you saw yourself, or what you understood from your men?

A. What I saw myself, sir.

By Mr. Gerard:

Q. Do you know whether the yawl had got to the side of the steamer at any time?

A. I know they did not.

Q. How near did they get to the side of the steamship?

A. I didn't see; but I know the yawl came back to the boat again, with the pilot in the yawl.

Q. Didn't you see the yawl by the ship's side-light, on the gangway?

A. No, sir.

38 Q. Don't you know that the yawl rowed up with those two men from that gangway to the point of collision, so as to get ahead of the steamer?

A. I don't know, sir.

Q. Didn't the pilot who was in the yawl get on board your schooner?

A. He came back to her again some time after the collision; he didn't come on board of her.

Q. Didn't he come alongside of the schooner?

A. He came close to us; I am not aware that he touched her side.

Q. Which way did he pull from?

A. From the steamer; that was after the steamer had backed away from us.

Q. That was just at the time of the collision?

A. No, sir; some minutes after.

Q. He had not got on board the steamer, but rowed back in the yawl up to where the schooner was sinking just at the time of the collision?

A. Yes; I won't say how long it was. I had been in the water, and had got on the boat again.

Q. Was it immediately?

A. I won't say how long; it was some minutes. I had been in the water, and was almost froze to death. I didn't take any particular moment of anything then.

Redirect:

Q. Where do you think the steamer would have struck you if you had not put your helm hard down?

A. Right amidships.

Q. How long do you think it was from the time you put your helm hard down to the collision?

(Not answered.)

Q. By the Court. How many boat-lengths did you run?

39 A. About a couple of boat's lengths. By putting my helm down the boat shot ahead so much quicker than by me keeping it up. We would have gone right up before the wind, but by putting it down the boat got headway on, and shot ahead very quick.

Redirect resumed:

Q. In boarding a steamer you purpose to run around, and pick your yawl up to leeward?

A. Yes, sir; we always pick the yawl up on the steamer's lee quarter as a general thing.

Q. When the steamer is heading to windward that way?

A. Yes, sir.

By Mr. Gerard:

Q. If you hadn't changed your course the steamer would have struck you point-blank amid-ships, with her bow straight amid-ships, not angling?

A. Yes, sir; not angling.

By Mr. Scudder:

Q. Your purpose in putting your wheel down was to make the blow easier?

A. It was to ease the blow, or clear her.

(Libellants suspend to allow claimants' witnesses to be examined out of order.)

FREDERICK BOLTON THWAITES called and sworn, out of order, for claimants.

Direct examination by Mr. Gerard:

Q. You were second officer on board the steamer City of Washington in March last?

40 A. Yes, sir.

Q. Coming into this port?

A. Yes.

Q. Do you remember the occurrence of the collision?

A. Yes, sir.

Q. Do you remember about what time of night it was?

A. It was just before midnight.

Q. In the month of March?

A. Yes, sir.

Q. About how far were you from Sandy Hook?

A. About 250 miles.

Q. And which way were you steering?
A. To the westward; west by-north.
Q. What sort of a night was it as regards the weather—the wind?
A. It was a squally night.
Q. What as regards the state of the weather, the atmosphere, the thickness?
A. It was thick in the squalls.
Q. Any moon or stars at the time—anything of that kind?
A. Between the squalls the stars were visible.
Q. How was the wind?
A. About northwest by north.
Q. Did you have all your lights up that night?
A. Yes, sir.
Q. The usual lights were burning?
A. Yes, sir.
Q. And what were the lookouts?
A. Two sailor-men on the lookout and an officer on the bridge. I was on the bridge.
Q. The usual men in the wheel-house?
A. Three men in the wheel-house.
41 Q. When did you first see this pilot-boat; your attention attracted that way?
A. Five minutes before midnight.
Q. Did you see any but the light of the pilot-boat?
A. Her flash-light first; nothing else.
Q. How did she bear from you at that time when she showed this flash-light?
A. About north.
Q. How many points from your course?
A. About six points.
Q. Did she seem any distance away then?
A. We could see the light a good way.
Q. You couldn't form any estimate of the distance?
A. I thought she was a good way off.
Q. Were you navigating the vessel?
A. I was in charge of the deck.
Q. What did you do then?
A. I reported to the captain, and asked if I should answer his signal.
Q. What did the captain say?
A. He said "yes," and steered for her.
Q. And you changed your course somewhat, and made for her?
A. Keeping her a little on the starboard bow.
Q. You headed more towards the flash-light—the position of the flash-light?
A. Yes, sir.
Q. Is that the usual proceeding when a pilot-boat is in view, to make for her?
A. Yes, sir; to answer her signal, and then steer for her; we answer her signal at the same time we steer for her.
Q. When you first began to make for her, was anything visible except the lights that she showed?
42 A. Only when she flashed her light; we couldn't see her hull.
Q. Was that by reason of the distance from you, or the state of the weather, or both?
A. It was owing to both.

Q. When you speak of squalls—were the squalls of a thick nature, so as to obscure the weather?
A. Yes, sir.
Q. Or merely a squall of wind?
A. It was hail and sleet.
Q. That was falling before the disaster, was it?
A. It was blowing; we had none at the time; it was blowing hail and sleet occasionally before.
Q. Any after the collision?
A. There was another squall after the collision.
Q. Did the captain come on deck then?
A. Yes, sir.
Q. What orders were issued?
A. He ordered the helm more to port.
Q. With reference to the engineer, or any orders of that kind?
A. The engineer was telegraphed to "stand by," and the helm was ordered more to port.
Q. (By the Court.) Where did the captain take his position?
A. On the bridge with me.

Direct resumed:

Q. When you speak now of porting the helm, that was the change of position you have indicated?
A. When the captain came up he ordered the helm more to port; I had a point on the starboard bow, and this brought her half a point further, no more.
Q. Then you kept on your ordinary speed at this particular time?
43 A. Yes, sir.
Q. When did you begin to change the engine?
A. Just after we steadied the helm more to port—after porting.
Q. Then the directions were given. What were they?
A. To slow the engines.
Q. Now, at this time, how far was the hull and masts of the vessel visible, or the sails of the pilot-boat—apparently, how far off? Give me an estimate at the time the captain came on deck and ordered the helm to be put to port. How far should you think, as a navigator—how far off was that schooner at that time?
A. About a mile off; I couldn't see her hull when we slowed first.
Q. When you slowed, can you give me an idea of whether the weather then was thick or not, and whether you could see a vessel?
A. I couldn't see the vessel.
Q. You saw just this flash-light?
A. Yes, sir; that is all. I saw no other light on her.
Q. What was next done? When did you see the yawl put off?
A. Just after we slowed the engines.
Q. How did you know that?
A. I could see the yawl's light; I couldn't see the yawl; I merely saw the light.
Q. You were observing this pilot-boat the whole time?
A. I was looking at the lights.
Q. Did you see the light of the yawl move?
A. Yes, sir; I see it begin to move.
Q. Could you now see what the schooner was doing; by the head-light of the schooner, what her maneuvering was?
A. She appeared to be getting more ahead.
44 Q. In what direction?

A. Moving across the bow, from starboard to port.

Q. Do you remember what other orders were given with reference to the engines on your vessel?

A. They were stopped.

Q. What was the first time that you actually saw the position of this schooner as regards the actual vessel itself, the hull of it?

A. Just after the engines were stopped.

Q. And where was she then?

A. A little on the starboard bow then.

Q. Heading what way?

A. Heading across the bow.

Q. (By the Court.) And you were heading then by the compass, how?

A. About north, half west.

Direct resumed:

Q. When you say the schooner headed across your bow, what was done on board of your vessel, if anything?

A. We turned back the engines.

Q. Was that the first time you saw the schooner at all, so far as her sails or hull were concerned?

A. Yes, sir.

Q. And about how far off was she from the bow of your vessel at that time? How many ship's lengths?

A. I should think about two or three ship's lengths off.

Q. Was there at any time, before that collision, that that schooner was, so far as you could observe, on your port side?

A. No, sir.

Q. How otherwise?

A. I never saw her on our port bow.

Q. (By the Court.) How was she always keeping, so far as your bow was concerned?

A. On the starboard bow.

45 Q. When you first saw the hull, which side of her hull did you see?

A. The port side.

Direct resumed:

Q. Not a broadside?

A. Not angling broadside, but making away from us.

Q. What sort of an angle; very much an angle, or more broadside? How was she heading?

A. I couldn't say how her head was.

Q. (By the Court.) When you saw her hull, how was her bow heading by compass?

A. About west, or west by south.

Direct resumed:

Q. You say the captain ordered the engine to back, half speed?

A. First, half speed; very shortly afterwards he ordered it full speed.

Q. How did the collision occur, so far as you saw it, and when? What did you see, under the circumstances, of the actual collision? Where was the schooner when you struck her, or she struck you?

A. She was very nearly ahead when we struck.

Q. Broadsides towards you, or angling?

A. At an angle when we collided.

Q. State everything.

A. After we saw the hull, we found she was pretty close and reversed

the engines, and then we starboarded the helm, and then she was under our bow; soon after we starboarded she was under our bow.

Q. How soon after you starboarded the helm did you strike her?

A. I should think about two minutes.

Q. And which side of your bow struck her, the starboard side or the port side of your bow, if there was any difference? Didn't she come under your starboard bow?

A. Under the starboard bow.

Q. When the collision occurred?

46 A. After the collision occurred we struck a little on that side.

Q. With what part of your rigging?

A. I think her masts struck the bowsprit.

Q. Did your bowsprit catch any part of her rigging?

A. Yes, sir, it caught the rigging.

Q. And after the striking—after the collision—what was the position of the schooner—on which side of your bow?

A. I couldn't see from the bridge. I couldn't see her.

Q. Don't you know the position in which she sunk with respect to your bow?

A. When she sunk she was a good way off.

Q. Then you had backed clear of her?

A. Yes, sir.

Q. Did you observe also the yawl coming towards you, and where the yawl had got to at the time of the collision? Had the yawl got up to your side?

A. She had been close to the gangway.

Q. About how close?

A. About twenty or thirty feet off the gangway, close up.

Q. Now, about how near was that yawl to you when you starboarded your helm, do you think?

A. It must have been very close. I can't say how far.

Q. Can you give an idea in feet, or ship's lengths; how many feet or yawl's lengths?

A. About twenty or thirty feet off.

Q. What was her position as regards the length of your vessel?

A. About midships; about the bridge by the gangway.

47 Q. I want to ask you whether at the time of the collision, or immediately after, was that yawl up to the sinking schooner? Did you see the yawl go up to the sinking schooner?

A. I saw her pull ahead immediately the collision occurred, pulling to the schooner after the blow.

Q. Ahead of the steamer?

A. Yes, sir.

Q. How long after the collision did the steamer back off?

A. She was clear in about two minutes, I should think.

Q. Now, can you give me any idea of your speed of motion through the water at the time the collision occurred; how far your progress had been checked, or was there any way left?

A. We were backing the engines.

Q. How far had that operated on the progress of the steamer?

A. Very nearly stopped her.

Q. Can you give any sort of idea of what her motion was as regards time?

A. It was very little, indeed.

Q. A knot an hour or a half hour?

A. About a knot an hour.

Q. After the collision you didn't move ahead over this boat, did you?

A. No, sir; no trouble in backing.

Q. Did you see the blow inflicted?

A. No, sir; I couldn't see that.

Q. And was your progress ahead at all impeded by the blow you gave?

A. No, sir; I never felt it.

Q. Could you perceive from your position the apparent, actual, and immediate cause of the collision; whether it was the motion
48 forward of your boat, or whether it was the throwing and lifting by the waves of the schooner upon you, or was it anything else; the immediate cause of the collision? What was the state of the sea? Was it calm or lively?

A. There was a little swell on.

Q. A medium swell, or a considerable swell?

A. Rather a rough sea for a small boat, but not for a steamer.

Q. Was the steamer pitching or rolling any?

A. Rising and falling a little with the sea.

Q. After the collision, what became of the schooner? Did it keep in sight, or did the thickness of the weather prevent you from seeing her?

A. She kept in sight.

Q. How far away did you back?

A. About a quarter of a mile before she went down.

Cross-examination:

Q. Where did you intend to take the pilot on board—on what part of the ship?

A. On the starboard, amidships nearly. On the starboard rigging—the main rigging.

Q. Did you have a ladder put over there for him?

A. Yes, sir.

Q. And a light to indicate it?

A. Yes, sir; and a light.

Q. Was that the lee side?

A. Yes, sir.

Q. Did you have any sail on the steamer?

A. Yes; the fore and main trysail were on her.

Q. At the time that you saw the yawl, were your sails aback any?

A. All aback.

Q. So that your ship had come around in the wind's eye?

49 A. Yes, sir.

Q. And made the starboard side of your ship the lee?

A. Yes, sir.

Q. Where did the men from the pilot-boat come on board your ship after the collision—which side?

A. The pilot came on board on the starboard side, and the men from the schooner got on on the port side.

Q. Was that the lee side at that time that they got up?

A. I think the wind was ahead at the time they got alongside—at the time these men got up. I think it was.

Q. Was the ladder shifted over from starboard to the port side to take these men up with?

A. There was a rope there. I think the ladder was shifted to get these men up; I think so.

Q. Wasn't that the reason why the port side was the lee side at that time?

A. The ladder wasn't shifted until the boat was there.

Q. (Question repeated.)

A. The boat came to the port side, and the ladder was shifted. I don't know how the wind was at the time.

Q. Did you ever see the yawl abaft of the ladder on the starboard side?

A. No, sir.

Q. Did you keep your eye on the yawl to know where it was?

A. I wasn't watching her particularly. I was tending the telegraph to the engine-room.

Q. Were you watching the schooner all the time? Did you have your eye on the schooner?

A. I couldn't say as to every minute of the time. I was telegraphing orders to the engineer.

50 Q. How fast was the steamer going through the water at the time the captain telegraphed the engineer to "stand by?" Was she going at full speed?

A. Yes, sir.

Q. How fast could she go when at full speed?

A. She was then going about 10½ knots.

Q. Do you know whether any response came from that order to stand by?

A. No, sir, no answer came back; there is no means of answering.

Q. After the order to "stand by," what was the next order to the engine-room that you heard? Did you give all the orders yourself?

A. Yes, sir; "half speed."

Q. What was the next order?

A. (Answer repeated.)

Q. And then was the time that you made the hull of the pilot-boat?

A. I didn't see her then.

Q. At the time the order was given to "half speed," were her sails drawing at all?

A. The steamer's sails were aback at that time; they were not drawing.

Q. How long did you go at half speed before you gave another order to the engine-room? How many lengths did you run before you gave the next order to the engine-room?

A. Four or five lengths.

Q. And what was that next order that you gave?

A. To stop her.

Q. Did you see the hull of the schooner at that time?

A. No, sir; I couldn't see it then.

Q. How long did she run on that order to stop—how many ship's lengths, should you judge?

51 A. Some five or six lengths, I suppose.

Q. What other order did you then give?

A. Reverse the engines.

Q. Did you see the hull of the schooner at that time?

A. After reversing the engines? Yes, sir.

Q. When you gave the order?

A. I think it was after I gave the order, or just as I gave the order. I think it was immediately after, or just at the same time I gave the order.

Q. How fast did the ship go through the water after the order was

given to "half speed," from the time you gave that order until you gave the order to slow? How fast had the ship went through the water; how many knots, or what rate from half speed to stop, between those times?

A. I suppose she was going seven or eight knots.

Q. When you gave the order to stop, but not to back, how fast did she go through the water on that order?

A. About four knots, perhaps.

Q. What was the order to back? Repeat it.

A. Back at half speed.

Q. What other order did you ever give to the engine-room?

A. Back full speed.

Q. When was that order given?

A. Very shortly afterwards.

Q. How long before the collision? How far off were you from the schooner when you gave that order?

A. About two lengths of the ship, or hardly that.

Q. How fast was the ship going through the water just before you gave the order to back "full speed?"

A. She was nearly stopped; perhaps two knots an hour.

Q. That is the best judgment that you can form?

A. Yes, sir.

52 Q. Were you standing on the bridge all the time?

A. Yes, sir; all that time.

Q. Did you yourself give the order to starboard the wheel?

A. I passed the word from the captain to the wheel-house; I passed it.

Q. How long does it take to throw the wheel over to hard starboard?

A. When it is going slow, very quickly.

Q. While you count 20 or 30 seconds?

A. Yes; about 20 or 30 seconds.

Q. When you gave the order to back full speed, did you see the yawl?

A. Yes, sir.

Q. Where was she?

A. She was coming towards the ship, a little forward of the bridge.

Q. On your starboard side?

A. Yes, sir.

Q. She lapped your bow?

A. Yes, sir; well on the starboard side.

Q. And which way was the bow of the yawl heading?

A. I think she was heading nearly straight to the ship.

Q. Coming bow on, at right angles, towards the ship?

A. Yes; or very nearly so.

Q. Did you see the yawl when you struck the schooner?

A. No, sir; I couldn't see her. She was under the hull.

Q. Did you hear any hail from the yawl?

A. I heard them sing out something; I couldn't hear what they said; steam was blowing off, and I couldn't hear what they said.

53 Q. (By the Court.) How was your engine at that time?

A. Going back.

Q. Strong or half?

A. Going back full speed when I heard them.

Cross resumed:

Q. Was there any fog that night?

A. Merely the snow-squalls.

Q. Any fog?

A. No, sir.

Q. How long is the City of Washington?
A. Three hundred and sixty feet.
Q. (By the Court.) What do you say was the cause of this collision?
A. The pilot-boat attempting to cross her bow.

Cross resumed:

Q. In saying that the steamer was going through the water at the rate of a mile an hour, you simply make this your judgment at that time; you have no positive means of getting at it?
A. Only judging, sir.
Q. From full speed ahead, if you got the order to stop her still, how long would it take to do it, do you know; to stop her still in the water, from full speed, how long would it take you to stop the ship?
A. Not more than two minutes, if reversing at full speed.
Q. From going full speed ahead, in order to make the ship lay dead in the water like a log, how long would it take, providing you reversed at full speed?
A. About three minutes, not more than that, to bring her to a stand-still.

THOMAS BRUCE called and sworn, out of order, for claimants.

54 Direct examination:

Q. You were the chief-engineer aboard the City of Washington in March last?
A. Yes, sir.
Q. And remember the fact of a collision at that time with this schooner, although you were below?
A. I was below, but I remember it.
Q. You were at your engine, below?
A. Yes, sir.
Q. You heard the signal to "stand by?"
A. Yes, sir.
Q. That was from the telegraph, of course?
A. Yes, sir; I have got a dial-plate there.
Q. You have heard the testimony just given by the second officer; did you have anybody in the engine-room with you to assist you?
A. Yes, sir; and I had charge of the watch. There was three engineers.
Q. You had no trouble in fulfilling the orders?
A. No, sir.
Q. Who had charge of the engine at the time?
A. I had it myself, it so happens.
Q. What was the first order?
A. To "stand by."
Q. Just before the order to "stand by," what speed were you making? How were you running; ordinary rate or average rate?
A. About from nine to ten knots.
Q. Do you make minutes of these orders?
A. Yes, sir.
Q. Is it your custom to do so?
A. Yes, sir; every movement.
Q. You kept a book for that purpose?
A. Yes, sir.

55 Q. Can you give me, by refreshing your recollection, or from memory, what orders were given to you? What was the next order?

A. The next order was to slow, and I slowed.
Q. What came next?
A. To stop.
Q. What next? Refresh your recollection by looking at your memorandum. Did you make the original memorandum?
A. Yes, sir.
Q. Is that an extract?
A. My next order was to astern at half speed. It is copied from the original.
Q. Where did you leave the original?
A. In Liverpool.
Q. Is it the custom to leave the log-book there?
A. Yes, sir.
Q. Did you make this extract yourself?
A. I did. I backed at half speed a minute after I stopped.
Q. The next order then was——
A. Astern half speed.
Q. And the next was what?
A. To stop.
Q. The next order after stopping?
A. Astern slow.
Q. Can you give me the memoranda of the intervals between these orders? Have you that on your record? From stand by to slow, how long was it?
A. About two minutes.
Q. From slow to stop, how many minutes?
A. One.
Q. From stop to astern half speed?
A. One minute.
56 Q. From astern half speed to stop again, what was this order? Was there any order after the astern-half-speed order? What order came after that?
A. To stop.
Q. What was that interval between astern half speed and stop?
A. About a minute.
Q. What was the next order?
A. Astern slow.
Q. At an interval of how many minutes?
A. Three.
Q. From astern slow what was the next order?
A. Full speed astern.
Q. How long was that?
A. Fifteen minutes.
Q. What was the next order? See if you are correct.
From full speed astern the next was stop.
64 Aft[illegible] next order?
[illegible]d slow.
could[illegible] didn[illegible] (Court.) You give these figures of the time, as well as the
Q. Did y[illegible] a copy of the log which you yourself kept?
A. I see on[illegible]
Q. How far [illegible]tries which you made at the time yourself?
A. About six[illegible]
Q. 210 feet? [illegible]ders were given, or at the time they were coming?
A. Not that [illegible]der noted down on the spot as it comes momentarily.
Q. How far is [illegible] you enter each order you entered the time that [illegible] in the engine-room?

57 Direct resumed:

Q. Did you feel the collision from where you were?

A. No, sir; I couldn't feel anything.

Q. You know nothing about the matter?

A. I was below, and knew nothing about the matter.

Cross-examination by Mr. Scudder:

Q. How much steam were you allowed?

A. As much as I can get; as much as I can carry, sir.

Q. No limit?

A. Yes, I am limited to thirty pounds.

Q. How much steam could you get on the City of Washington?

A. I could get thirty pounds if I was stopped.

Q. How much under headway?

A. Generally from twenty-five to twenty-six pounds.

Q. How much that night, at the time of this collision?

A. About that, I dare say, about all the steam I could get on her. Of course, I got a little more when I began to slow.

Q. Did you keep her wide open at that time?

A. I worked according to the telegraph. I was going full speed wide open.

Q. And you obeyed each one of these orders as rapidly as they come to you?

A. Yes, sir; I did it momentarily.

Q. And you went fifteen minutes full speed astern? See if you were correct. Look at your copy.

A. I didn't say so. I went astern slow fifteen minutes.

Q. What was the next order that you got then?

A. Full speed astern.

Q. How long did you go full speed astern?

A. About a minute.

58 Q. What was the next order that you got?

A. To stop.

Q. See if I have got this right, according to your minutes. You got an order to "stand by;" the next order was to "slow," then to "stop," then back "half speed," and then "stop," and astern "slow" fifteen minutes, and then "full speed" astern, then "stop," and then ahead "slow?"

A. Yes, those were all the orders I received, and I obeyed them.

Q. How long would it take you to stop the ship when she is going at full speed, so that she will lie dead in the water, if you reverse as quick as you can?

A. It would depend on the weather, that, and if she was carrying canvas.

Q. Suppose her sails were all aback, and running in the wind's eye?

A. I think I could have her going astern in a minute. I think I could have sternway on the ship in a minute, if the sails were aback.

Q. You mean square sails, or fore-and-aft sails?

A. Square sails; fore and-aft sails wouldn't make much [illegible] could stop her in a minute.

Q. With nothing but trysails set, and the steamer going [illegible] eye, how long would it be from going at full speed until [illegible] sternway on her?

A. In about a minute. I could reverse her in about [illegible] collection, or from

Q. How many revolutions does it make in a minute?

A. From 50 to 56. What was the next

Q. Reversing at half speed, how long would it take you to get sternway on her, provided she was going at half speed?

A. Well, perhaps a couple of minutes or three minutes; two or three minutes.

59 Redirect:

Q. You felt no jar?

A. No, sir.

Q. (By the Court.) You heard nothing of what happened?

A. No, sir. I merely obeyed the dial-plate.

Recross:

Q. Mr. Bruce, at what rate did you go astern, slow 15 minutes—your engine speed?

A. About half speed; about slow perhaps 20 or 25 revolutions a minute, half speed; something like that, you know.

Q. Concerning this time, have you ever discussed it with any one, or talked it over, as to whether you were correct or not, with the captain of the ship?

A. No, sir. I worked my engine-room by my own clock.

Q. Have you ever talked it over with the master of the City of Washington, or with anybody? Did you or not?

A. We have talked a little about it, I dare say, but I don't remember anything that was said at the time.

CHARLES TAFFE, called for claimants, out of order, sworn and examined by Mr. Owens:

Q. Were you on board the steamer City of Washington at the time of this collision?

A. Yes, sir.

Q. Where were you?

A. In the wheel-house, sir.

Q. How long had you been in the wheel-house?

A. Two hours, sir.

Q. What part of the wheel had you?

A. The starboard side of the wheel; in charge of it.

60 Q. Who was with you?

A. Three other men, all at hand, standing by, sir.

Q. Did you hear of the signal of the pilot-boat?

A. Yes, sir.

Q. What order did you get after hearing the pilot-boat was in sight?

A. To put our helm hard aport.

Q. Did you put it hard aport?

A. Yes, sir.

Q. How were you heading by compass before you put it hard aport?

A. About west, half south.

Q. After you had put the helm hard aport, and had steadied it?

64 A. North, half west, sir.

could didn't see the signal?

Q. Did y A. I didn't.

A. I see o Q. How did you hold the wheel in that position?

Q. How fa A. For seven seconds—a little while.

A. About Q. Where you could hear orders given to the engineer?

Q. 210 feet A. I didn't hear anything.

A. Not that Q. The next order that you received in reference to the

Q. How far i

A. The next order I received from the captain was to starboard our helm, the instant the collision happened.
Q. How many spokes had you got it to starboard?
A. About six or seven spokes; no more on it until she struck.
Q. Could you feel the jar?
A. I heard it quite plain, sir.
Q. Had your steamer begun to answer that starboard helm?
A. She hadn't time to answer her starboard helm.

61 Cross-examination:

Q. Where was the compass with reference to where you was standing?
A. Right facing me in the wheel-house.
Q. What was the names of the other men in the wheel-house?
A. One was named Griffiths.
Q. What were the others' names?
A. Patrick Rice and Jones, sir.
Q. How long have you been at sea?
A. Twenty years, sir.
Q. In what capacity?
A. Before the mast, sir.
Q. What were you on board the City of Washington?
A. Quartermaster, sir.
Q. How many spokes does it take to turn the wheel from "steady" to "hard aport?"
A. It takes about five round turns of the wheel to turn it to hard aport.
Q. Had the City of Washington a double wheel?
A. Yes, sir.
Q. How many men does it take to turn it?
A. Four; two to each wheel.
Q. Were you in command of the wheel-house that night?
A. Yes, sir.
Q. Any other quartermaster with you?
A. Yes, sir; he was in the wheel-house, but not on the wheel—Patrick Rice—lending a hand according as it was wanted.
Q. How long did you run from the time that you got the order to hard aport until you steadied?
A. About a minute, or a minute and a half.
Q. During that time she swung from west half south to north half west?

62 A. Yes, sir; just 8 points.

Q. How long did you run after you steadied your helm before you got the order to hard astarboard?
A. About two or three seconds more.
Q. On a steady helm? ing?
A. Yes, sir.
Q. And then you got an order to hard astarboard?
A. Yes, sir.
Q. Did you get any other order between the order ha- hard astarboard?
A. No, sir.
Q. Did you get any other order after you got the or board?
A. No, sir; the next thing I heard was the collision collection, or from
Q. Did you go on and put your wheel hard astarb What was the next

A. Yes, sir, I obeyed that order; I got it over about 6 or 7 spokes.
Q. Did you, in fact, complete the order?
A. No, sir; no more than that. He sung out "steady" after we struck her, sir.
Q. After you struck, you got the order to "steady?"
A. Yes, sir.
Q. At the time that you got the order to steady, the wheel had only been put 5 or 6 spokes to starboard?
A. Yes, sir.
Q. Which way was the City of Washington heading at that time?
A. About west by north half north about the time the blow was struck.
Q. How long had she been heading in that way?
A. Not many seconds; about three or four seconds.
Q. Is there a clock in your wheel-house?
63 A. Yes, sir.
Q. Was it where you could cast your eye on it?
A. Yes, sir.
Q. What was your true course into New York?
A. West half south; that was the course we were steering before we got the pilot.
Q. Before that order did you know anything about this being a pilot?
A. No, sir.
Q. Did you know that it was a pilot when you got this order?
A. Yes, by his showing his flash-light.
Q. Where away did he bear from you?
A. About due north from our ship he bore, sir.
Q. Where away from your ship—abeam?
A. Right abeam, sir.
Q. How far did you think he was off?
A. I suppose he was about three miles, first when we saw her.
Q. Did you see him before you got this order?
A. No, sir.
Q. After you got this order, did you see the light again?
A. Yes, sir; he was then drawing more ahead of us, on our starboard bow.
Q. Where is your wheel-house located with reference to the stern of the ship?
A. In the forepart of the ship.
Q. How far from the bridge?
A. Before the bridge—three yards before the bridge.
Q. Did you see his light from time to time?
A. Not always.
Q. Did you from time to time?
A. Once. I seen it only once, and instantly as we struck. I seen her sails on the starboard bow.
64 Q. Which sails?
A. I couldn't say whether it was the foresail or the mainsail; I couldn't say.
Q. Did you see more than one sail?
A. I see one of them, but which I couldn't say.
Q. How far is your wheel-house from the stem?
A. About sixty or seventy yards from the stern.
Q. 210 feet?
A. Not that much; about 100 feet.
Q. How far is your wheel-house from the bridge?

A. About four feet forward of it.
Q. Are you nearer the bow or the stern?
A. Half as near again to the bow.
Q. One-third of the distance from the bow?
A. More than that.
Q. How many feet from the bow to the wheel-house?
A. About 100 feet or 110 feet.
Q. Did you see any stars that night?
A. No, sir.
Q. Was it foggy?
A. Not to say very clear; it was sleeting now and again.
Q. Did you see any fog?
A. Only just when the hail-storm came; it was thick, and then it would clear up.
Q. When you saw the signals how far do you think she was off?
A. About three miles, I judge. She was about three miles off.
Q. How was the wind that night?
A. The wind was about west-northwest.
Q. When you had straightened up on your course north half west, which was the lee side?
A. The starboard side.
65 Q. Do you know where the ladder was put to receive the pilot?
A. Abreast of the main rigging, on the starboard side, sir.
Q. Did you see these men from the schooner come on board?
A. I didn't see them; I was in the wheel-house, and I didn't know how they got on.
Q. Could you see the schooner's sails plainly?
A. No, sir; not plainly.
Q. You couldn't tell whether the jib was on your starboard side or the mainsail?
A. No, sir.
Q. Could you tell which way the schooner was heading?
A. I couldn't say; it was too dark from pilot-house.
Q. What was the appearance of this sail that you did see?
A. I fancy it was the foresail I see.
Q. But whatever you did see, was it on the starboard side?
A. Yes, sir; on the starboard side.
Q. What windows are in your wheel-house?
A. Two windows on each side, and the forward part of it all glass. I could see plainly sails or objects all about there.
Q. Did you look at your compass at the time of the collision?
A. Yes, sir.
Q. Did you feel the jar of the steamship?
A. Yes, sir; I heard the crash at the time when she struck us.
Q. Was there any jar?
A. No, sir.
66 Q. Where is the compass from where you were standing?
A. Right facing me, sir.
Q. At the time of the collision did you notice whether the sails were aback or not—your sails?
A. Our sails were aback, fore-trysail and main-trysail.
Q. How fast were you going through the water?
A. We had no way on us whatsoever that I know. We were going astern; the engines were moving astern; she was just about getting sternway on her when we struck her; just about getting sternway on her.

Q. She had not, in fact, got any on?
A. Slightly weighing astern.
Q. Lying quiet in the water?
A. Yes, sir.
Q. Couldn't you from your wheel-house see where these men got up the ladder?
A. No, sir.
Q. Where did they get up the ladder?
A. On the port side.
Q. Abaft?
A. Abreast of the bridge—of the wheel-house.
Q. Did you observe the wind yourself that night by compass?
A. Yes, sir.
Q. Which way was the wind blowing by compass?
A. West-northwest.

By Mr. Owens:

Q. On your direct examination you stated that after the order to port—to run towards the pilot-boat—the next order was to starboard?
A. Yes, sir.
67 Q. And that you obeyed that order, and had got your wheel to starboard 6 to 8 spokes before the collision?
A. Yes, sir.
Q. You were asked on cross-examination how you headed after you got your wheel over to starboard 6 or 8 spokes at the time you struck this schooner, and you say, "West half north," I think. Do you mean to say that you had fallen off from your original course?
(Objected.)
You have heard my remarks to you. Which way do you say you were heading, sir, when you struck the schooner?
A. About north half west, sir.
Q. The order to steady was given after you had struck the schooner?
A. Yes, sir.

Recross:

Q. Didn't you get any order to steady, after this order to hard aport?
A. No, sir.
Q. When you got the order to hard aport you moved your wheel over to the port bar, and kept it there how long?
A. About a minute; not quite a minute.
Q. And you didn't get any order to steady?
A. Yes, sir.
Q. About a minute afterwards?
A. Yes, sir.
Q. So that you then received the order to hard aport, and then the order to steady, and then the order to hard astarboard?
A. Yes, sir.
68 Q. How long was it between the order to steady and hard astarboard?
A. Two or three seconds.
Q. And about a minute from the order to hard aport till you got the order to steady?
A. Yes.
Claimants suspend.

Testimony for libellants resumed.

WILLIAM HENRY MCGEE called and sworn for libellants.

Direct examination:

Q. What is your business?
A. Sandy Hook pilot?
Q. How long have you been a pilot?
A. Fifteen years the second of next month, it will be, sir.
Q. What was your business in March, 1871?
A. Sandy Hook pilot.
Q. And aboard of what boat?
A. John D. Jones, No. 15.
Q. You were a part owner?
A. Yes, sir; one-sixth I owned.
Q. Where were you on the night of the 28th of March?
A. We were in longitude 68° 10′, and about 46° 41′ latitude.
Q. How was the weather, about from 11 to 12 o'clock?
A. It was clear then, sir.
Q. How had it been before that?

A. We had had it blowing strong from the westward, northwest
69 by north; from northwest to north, northwest, and at times snow-squalls; just a squall pass over, lasting perhaps not six minutes, and perhaps from three to five minutes; but then it would be perfectly clear again.

Q. About 11 o'clock that night who had the watch?
A. Mr. Baillie and one of the hands.
Q. Where were the rest of you?
A. All down below. I had just turned in my berth—just got in.
Q. How was the schooner lying at the time when you went down below, or heading?
A. She was heading about west-northwest—west by north.
Q. And what sails?
A. Three close-reefed sails; laying to, on the starboard tack.
Q. What was the first knowledge that you had of this steamship?
A. I heard the light reported on our lee quarter—on our port quarter.
Q. What then?
A. I jumped out as quick as I could.
Q. Just tell all that transpired from that time up to this accident that occurred. Speak slowly, so that we can get it.
A. I got right out of my berth, and commenced dressing myself as fast as I could, as it was my turn to go on board the steamer. They had given her one torch, and was showing the second torch-light when they showed us their blue light. I came on deck, and got ready to go on board as soon as I could. I saw his masthead light—his bright light; then I went right down below to get ready. I looked up once or twice, and I saw his green light once when I came up to go on board. I saw his red light and his masthead-light. Then we moved the yawl out, and I got in with two of the boys.

70 Q. At the time you moved your yawl what lights did you see?
A. His green light, and his white or bright light.
Q. His starboard light?
A. Yes, sir; that is, when I was getting in the yawl; and all at once he showed his red light and shut in his green.
Q. How long was it from the time that you saw his green light and his masthead-light until the time that you saw his red and masthead light?

A. I suppose it might have been a minute and a half, perhaps.

Q. During that time did you at any time make out all of his lights?

A. No, sir; I didn't.

Q. (By the Court.) Where was you when he first showed his red light?

A. On deck, in the cock pit, after he had showed his green light. I just came up then.

Q. Did you get in the boat then?

A. No, sir; I got in the yawl a minute after, or a half minute. I got in and dropped astern of the boat, the yawl still towing, and the boat heading southwest to west. I had looked in the compass once, and we were heading southwest half west.

Direct resumed

Q. When you dropped from the schooner in the yawl, what lights did you make on the steamer?

A. When I let go of the boat, then his green light was in sight, and his masthead-light when I let go to pull to him. I let go and pulled towards him till I got under the bow between his bow and the fore-rigging on the starboard bow; then I slewed my yawl right around, the same as the ship's head, and the steamship was going right by me.

71 Q. Her head was pointing the same way with the steamship?

A. Yes, sir.

Q. (By the court.) In what direction then?

A. About northwest by west; I couldn't state exactly.

Direct resumed:

Q. How many men did you have in the yawl with you?

A. Two, sir.

Q. After you got the head of the yawl slewed around, going the same way as the steamship's head, what then did you direct your men to do?

A. I told them to pull as hard as they could the same as the steamship was going, and I hollered as loud as I could holler for the captain to go back full speed.

Q. When you say you hollered to the captain, what point of the steamship was you opposite?

A. I was about abreast of his fore rigging, on his starboard side, when I hailed him first.

Q. At that time how were your men pulling?

A. In the same direction as the ship, and as fast as they could pull—the two of them, as hard as they could pull.

Q. Did the ship go faster than you did?

A. Yes, she went by me till I got abreast of her main rigging.

Q. And how far abaft the ladder?

A. I suppose I was 60 feet abaft her ladder, abaft where her light was.

Q. Did your men work all this time?

A. Pulling as hard as they could pull all this time.

Q. What did you observe concerning the ship's motion?

A. The ship went by me, and when she struck the boat she was still going by me; her white water was not abreast of her mizzen rigging when she struck the boat.

72 Q. The back water from the revolution of the propeller had not thrown the white water up to her mizzen rigging, when she struck?

A. No, sir.

Q. How far was you from this white water?

A. Not over 10 feet. I was afraid of getting into the back water. I was so close as that.

Q. How far from the steamship?

A. About 20 feet from her side.

Q. And abreast the mizzen rigging?

A. Yes, sir.

Q. Then what did you observe after she struck the schooner?

A. All I could see was our boat astern roll over to the windward, and I told the boys to pull as hard as they could for the schooner; I didn't undertake to board the steamer at all. I wanted to save their lives. The ship finally got free, and I pulled around her bows just as she had backed out of the boat. I pulled alongside, within three feet of the boat's side, so that the man pulling the oar on the port side had to lift it; and I asked Baillie if the boat was sinking. He said "No," first. The steamer was backing all this time to get clear of the boat. I was going aboard then, and I told one of the boys to pull his port oar in. Just at that moment one of the boys says, "The boat is going down." Mr. Baillie come up from the cabin then, and says, "She's a sinking." At this time Hobbs was overboard, and they was a hollering from the ship to come and save him, and so I shoved the boat off with the oar, and started to pull back for this man that was drowning that was in the water; and then Mr. Baillie hollers again, "Come here quick with the boat; she is going down." So I slewed the yawl around again, and come up pretty close, and asked Baillie if he hadn't men enough to
73 heave the other yawl out, and he said "No." Then he says, "Yes, I have got enough;" and I pulled right around then for Hobbs, and he was, I suppose, 200 feet at least from the ship—from the schooner. I got him in the yawl, and got him alongside; the schooner had fell off then, and was heading from west-southwest to southwest. I didn't look at the compass, but she had fell off and brought up; her headway had stopped, and she had fell off.

Q. At the time you left the schooner, how was the schooner heading?

A. About southwest.

Q. Did she have any different sails from what she had set before?

A. No, sir; three close-reefed sails.

Q. If the steamer had kept her course where would she have gone, with reference to the schooner?

A. Astern of the schooner.

Q. How far astern?

A. Half a ship's length.

Q. Do you know anything about the way the blow was struck?

A. No, sir; I couldn't tell exactly, although I knew she struck. I seen one piece of her mainmast, about thirty feet long, lying kind of crossways on her deck; it was right athward the ship's bow, angling from it.

Q. What is the customary way to board a steamer by a pilot?

A. We always get ahead of them, so as to drop our yawl; if we get astern of the steamship, it is pretty hard work for us to catch them, and we cannot unless they stop their boat still. If Captain Jones had stopped his ship still, there wouldn't have been any collision, and we could have got on board the ship without any difficulty at all; but the ship was going too fast.

74 Q. How long do you think the schooner remained afloat?

A. I don't think more than 15 minutes. I got Hobbs—I had a

dark lantern—and just as I got to him, and before I seen him, as every sea would go over him, I stood up in the stern of the boat, and with a dark lantern, which we always carry in boarding a vessel at night, I found him in the water, and pulled him right in as quick as we could, and went and got alongside the ship. I got aboard, and after we got aboard Captain Jones says to me, "Magee, you get in the yawl and see how bad the boat is hurt;" so I got in the yawl with two men, and got right up close to the schooner. By this time, her jib being set, of course she had forged ahead some. Captain Jones told me to go on board and see if we could tow her in, and if we could we would do so. I wasn't in the yawl perhaps a minute, not over two minutes, when I lost sight of her lights—she was on our port bow. As soon as I lost sight of her lights, I got on the ladder and came on board again; and as soon as I got on the bridge I saw the mainmast, and the water was all foam-like where she went down. Captain Jones says, "We may as well go ahead;" and I said we might stop her still for a half minute or so, and then we went ahead full speed.

Q. Did you bring her in as pilot?

A. Yes, sir.

Q. Were you ever in her wheel-house?

A. I have looked in; I have been pilot of the ship several times; I don't know as I had ever been in.

Q. Do you know whether you could see lights out ahead?

A. You can't see a pilot-boat's light short of a half a mile; her wheel-house is flush with her deck, and the pilot-boat is low. That steamer's side, at the least calculation, is twenty-five feet above the water, and our three reefed sails were not over fifteen feet, and a light
75 has got to be some ways off to be seen out of that wheel-house, and unless it is you can't see it.

Q. The pitch of the bow would prevent it?

A. Yes, sir; some steamships I have been pilot of I couldn't see off the bridge, not right directly ahead.

Q. Was there any fog that night?

A. No, sir.

Q. How far could you distinguish a light?

A. I suppose you could see a light five miles—a steamer's masthead-lights, that is, when there wasn't one of the squalls, between the squalls.

Cross-examination:

Q. How many oars were there to this yawl in action?

A. Two.

Q. Two boys?

A. Yes, sir.

Q. What do you call boys?

A. One of them is about forty-five, a pretty old boy.

Q. Each had an oar?

A. Yes; we always call them boys on the pilot-boat, even if they are sixty.

Q. You pulled toward the steamer, on her starboard side?

A. Yes, sir.

Q. Where the light showed?

A. Yes, sir.

Q. That was about amidships, or a little abaft?

A. A little abaft.

Q. Did you go for it immediately—the position of that light; you headed straight on to it?

A. No, sir; we have to keep off pretty well from the bow of the boat.

76 Q. When you first changed your course in the yawl, and headed directly toward the steamer, going with her on a parallel course, where were you as regards her length?

A. Forward of her fore rigging.

Q. About how many feet from her stem?

A. I suppose her fore rigging is 50 feet abaft her stem, I should judge.

Q. Then you changed your course, and headed parallel with the steamer.

A. Yes, sir.

Q. Was there any one time during that rowing that you got behind that light that you were making for?

A. Yes, sir; that was when she struck the boat; I was abaft her mizzen rigging.

Q. No further abaft than that?

A. No, sir.

Q. That was just about the position of the light?

A. The light was about the main rigging.

Q. And your little yawl kept pace with the steamer?

A. No, sir. If the ship hadn't gone by me, we wouldn't have got abaft her mizzen rigging.

Q. There was no one time that you were left entirely astern of the ship?

A. No, sir.

Q. Therefore you always kept parallel with the ship, and were never more than a little abaft her mizzen rigging?

A. No, sir.

Q. And nobody else with you, only the two boys, at the time?

A. Yes, sir; that is all.

Q. What sort of a yawl is this?

A. A regular Yankee-built boat, built in New London. We have them built there because they build the best there for the sea.

77 Q. How was the waves then; pretty calm?

A. They were not very severe.

Q. Pretty stout wind blowing?

A. Nice breeze.

Q. Some motion of the waves?

A. Yes; there always is.

Q. Water came into the boat occasionally?

A. No, sir; never shipped any seas.

Q. You pulled toward the starboard side of the steamship, allowing for her progress?

A. Yes, sir; we can't go right under the bow of a steamship, especially when she is under way.

Q. In order to made a little allowance for her progress?

A. Yes, sir; the steamship was going from four to five knots.

Q. How long did it take you to row from the time you actually pulled your first stroke from the schooner, to the time when you changed your position to row parallel with the steamer?

A. I should judge it was from two to three minutes.

Q. In what sort of a course did you pull from your schooner to the steamship's starboard bow? In what direction by the compass did you pull from your schooner to the steamship?

A. About southeast by east.

Q. (By the Court.) How was the steamer moving through the water? Which way?

A. She was heading about northwest.

Q. How fast?

A. I should judge at the time 3½ or 4 knots. At the time she struck the boat she was going, at the least calculation, 3½ knots.

Cross resumed:

Q. Where was your position in the yawl at the time the blow
78 was struck, as regards the length of the vessel? As regards the length of the vessel, when collision occurred where was your yawl situated?

A. A little abaft the mizzen rigging, about 20 feet from her side.

Q. When the collision occurred you kept on rowing?

A. Yes, sir; as hard as I could.

Q. And you rowed towards the schooner?

A. Towards the bow of the steamer.

Q. How soon did you get up to the sinking schooner?

A. I suppose it would take me two minutes till the time I got around her bows.

Q. And then things had come to a stand-still, more or less?

A. Yes, sir; to the best of my judgment, about two minutes. I had to pull around the ship's bow.

Q. So as to get up to the schooner?

A. Yes; so as to help these men.

Q. Did you have any trouble in pulling up to her?

A. No, sir; not after the ship's headway was over.

Q. Then you remained there for how long a time, at the bow of the schooner? Did the men rest on their oars?

A. They had one oar in. The port oar was laid in.

Q. Were you just paddling?

A. I just pulled up alongside and asked Baillie if the boat was sinking.

Q. You were not holding on to the schooner?

A. No, sir.

Q. You say you observed the white water of the vessel?

A. Yes; I could see her white water under her stern.

Q. Where did you see that? How far did it extend? Did you get back in your yawl into that white water?

79 A. No, sir; it didn't strike me, I was just clear of it. I was afraid it would strike me.

Q. How far forward had it got?

A. It hadn't got to her mizzen rigging when she struck the boat; not over twelve to fifteen feet from the mizzen rigging.

Q. At the time of the collision the white water from the stern was within twelve to fifteen feet of the mizzen rigging, which rigging was abaft of the stem how far?

A. I should say it was 310 feet.

Q. As far as that?

A. I should judge it was; the ship is 356 feet long.

Q. This white water from the stern, was it moving forward, and had it got pretty near to the mizzen rigging?

A. Yes, sir; at the time of the collision it did, and got up to the main-rigging, and I know it to be so; but no ship that is going ahead would throw white water forward.

Q. At the time you left your schooner you hadn't observed the compass, and couldn't tell exactly how she was heading?

A. I only looked once, and then she was southwest half west; then they got the helm unlashed, and I looked out for the boat.

Q. You say that if the steamer had kept her course she would have gone half a ship's length astern of the pilot-boat.

A. Yes, sir.

Q. Don't you think that is pretty close shaving for a night like that?

A. No, sir; I don't think it is, I don't think there was any close shaving about it.

Q. Your ship wasn't still?

A. We didn't require our ship to be still.

80 Q. Don't steamships keep up some motion after signaling pilots, even while the yawl is approaching?

A. It is usual for them to stop their ships still.

Q. Is is not quite as usual for them after signaling the pilot, to keep up some motion?

A. They hadn't ought to motion ahead any.

Q. Whether, in fact, they don't go ahead sometimes?

A. Yes, oh, yes; sometimes.

Q. Whether it isn't usual or customary for them to keep some sort of motion, instead of remaining perfectly quiet?

A. No, sir; I think it is not the custom.

Q. A great many do?

A. Oh, yes; I have been very near drowned going alongside steamships; but it isn't right.

Q. Now, you say, that it is always usual for these schooners to get ahead of the steamer, in order to drop their yawls?

A. Yes, sir.

Q. The reason is that the steamer may move ahead and get out of your way, and drop the yawl behind?

A. Yes, sir; as a general thing they have their ladder forward of amidship, so as not to detain the ship any longer than possible.

Q. So that by dropping ahead, you make allowance for the motion of the steamer?

A. Yes, sir.

Q. Is that the usual maneuvre of a pilot-boat, after dropping the yawl, or is it a matter of discretion under the circumstances, as regards the position of the schooner?

A. It is owing to how the wind is; it is a matter of discretion.

81 Q. If the wind was favorable to her going astern, she might as well go astern as to go right in the teeth of the wind?

A. Yes, sir; so long as the wind is so that she can.

Q. So that there is no particular necessity for going right in the teeth of the wind when you can sail astern?

A. Of course.

Q. As a general rule, if the wind is fair, you keep with the wind?

A. That is according to how we want to go.

Q. What was the intention of the schooner at that time?

A. She wanted to go around the ship and get the yawl after they had put me aboard.

Q. Your theory was to pass the steamer on her port side and come round under her stern and take up the yawl there?

A. Yes, sir.

Q. When you left this schooner in your yawl, about how far, so far as you can judge, was the steamship from the schooner?

A. I should judge she was 500 feet.

Q. Can you tell me, at the particular time that you pulled off from the schooner, how the steamship bore from the schooner?

A. I should judge she bore about southeast from the pilot-boat; that would be very near our beam—a little abaft the beam; I couldn't tell within a point of the compass; to the best of my judgment, about southeast. We were heading southwest, and southeast would be about abeam.

By Mr. Owens:

Q. How fast was your schooner sailing at this time?

82 A. From three to four knots. The wind was puffy sometimes, and when we got a puff of wind, when it would strike her, it would send her ahead, and then not so fast at other times.

Q. Free, or close hauled?

A. Going free, sir.

Q. How far was it from where you left the schooner, cutting the line of the direction of the steamer, as you were, crossing the line of the direction of the steamer, the course of the steamer, where did the course of the steamer—where would that pass you?

A. They would pass the boat under our stern.

By Mr. Gerard:

Q. Whether, at the time you left your schooner, you saw the hull of the steamship?

A. Yes, sir, I did; she was nearly ahead. I could'nt see either side. I made the hull right dead ahead, end on.

By Mr. Owens:

Q. How far would your schooner have run, from the moment you left her, before she would pass with her stern the line of the direction of the steamer?

A. She was already passed when I left her.

By Mr. Scudder:

Q. How fast do you judge your yawl to have been going when you were pulling with the steamer?

A. I should say I was going about three knots.

Q. Did, or not, the steamer change her course, as you saw her?

A. Yes, sir.

Q. And which way?

83 A. She starboarded her helm, and her head swung to port.

THOMAS MOSLY called and sworn for libellant.

Q. What is your business?

A. Sandy Hook pilot.

Q. How long?

A. Twenty-one years, sir.

Q. Are you familiar with the way in which pilots approach a steamer at night for the purpose of boarding her?

A. I am, sir.

Q. State what that custom is, and if it is universal?

A. When we make a steamship at night the first thing in order—the first we see of it is the masthead-light, and then the two lights, red or green, show the ship's intentions, whether she is going directly ahead of us or for us. When we see the steamship we give them a flash-light, and they reply with a rocket—pilot-boats being the only vessels that carry that kind of a light. We show them a flash-light, and a vessel re-

quiring a pilot heaves up a rocket, and we approach the ship, and she remains perfectly still until we board her. That is the duty.

Q. How, in fact, do you get to her?

A. We sail to her.

Q. And where do you make her; head on her bow?

A. That is according to circumstances. If the ship is coming for us we drop ahead of her; drop our yawl ahead with the pilot who has the turn, or whose turn it is.

Q. Where is your pilot-boat with regard to the ship now?

A. We are now making the customary evolutions for our boat to board the ship, and any alterations she makes after this is at her
84 own risk. She should remain still; the yawl pulls to the ship, and the pilot-boat goes away about her business, and picks up the yawl.

Q. Have you piloted steamships in and out of the city of New York?

A. Yes, sir; many times. I have been this ship's pilot frequently, too.

Cross-examination:

Q. You are giving your views of the duty of a steamship?

A. Yes; I believe that is what I was asked.

Q. According to your views?

A. I have explained that the yawl is the only medium between the boat and the ship.

Q. What I want to ask is this: In giving your testimony you are giving your views of the duty of a steamship?

A. Yes, sir.

Q. Is it not necessary for a big steamship under certain circumstances for the purpose of steerage-way to keep up a certain amount of slow movement?

A. It is not necessary at all, sir, under any circumstances. It is her duty to remain perfectly still and allow the yawl to approach.

Q. How many ships have you boarded during your career as pilot?

A. As many as any man in the port of New York.

Q. You have boarded this ship before?

A. Yes, sir.

Q. Has she always been stationary when you boarded her?

A. As near to it as possible. I hope you don't take it up as meaning perfectly still, but as near it as it can be done.

85 Q. It cannot always be done?

A. It can always be done further than the motion which the sea will give.

Q. When you boarded the steamship City of Washington and others, there has been some sort of movement of the wheels and screws, has there not?

A. When I drop ahead of a ship, if she had too much way on to her, she would certainly have to reverse her engines, and come up to the yawl.

Q. In order to reach the yawl, which is dropped ahead of the ship, she is to have some sort of movement to get to the yawl?

A. No, sir; the boys in the yawl can do all this. There is no calculation for the ship to do; it is made by the pilot in the yawl.

Q. Out of the number of steamships you have boarded, what proportion have had some sort of motion on, at the time you boarded, as regards those that had none?

A. I don't understand your question.

Q. (By the Court.) How many ship' were still when you boarded them?

A. The majority were still at night-time.

Cross resumed:

Q. How near do pilot's schooners run to steamships, before the yawl casts off?

A. Within hailing distance. We are complete master of the boat in a breeze of wind, and we can do anything with them, within a hundred feet of the vessel with perfect safety.

Q. Do you often get within that length? Under ordinary circumstances, how near do you expect to get to a steamer, when you drop your yawl?

A. About two hundred yards. I don't hold myself to a yard or two.

86 When a steamship is coming for us ahead, we never interfere with the steamship's course when we drop our yawl. We drop our yawl 200 yards ahead.

Q. When you are right ahead of her?

A. Yes, sir.

Q. Is it usual for the pilot-boat to endeavor to stop all motion, or keep in motion, after casting off the yawl, especially in a dark night, or is it usually supposed to keep in motion?

A. That depends altogether upon circumstances.

Q. There is no particular rule about it?

A. The particular rule in dropping off the yawl is to get her again.

FREDERICK V. BAUDIER, called and sworn for libellants.

Q. Sandy Hook pilot?

A. Yes, sir.

Q. How long?

A. 24 years.

Q. Are you familiar with the method of approaching steamships by pilot-boats?

A. A great many, sir, I have boarded.

Q. How does the pilot-boat desiring to put a pilot on board a ship approach her?

A. According to which way the ship is coming?

Q. When the ship is coming right ahead?

A. When the ship is coming for a pilot-boat, she shows us a blue light or rocket in answer to our signal to let us know that she sees us and wants a pilot, and then we get nearly ahead of the ship, and there is a white light hung alongside of the ladder, and by that we know how the ship is coming for us, and we drop them a boat, and they pull to where that light is. It is supposed to be near the water.

87 WILLIAM A. GRIFFITHS called and sworn for the libellants.

Q. What is your business?

A. Pilot.

Q. In March, 1871?

A. Sandy Hook pilot.

Q. Where were you on the 28th of March?

A. Aboard the pilot-boat J. D. Jones.

Q. In what capacity?

A. Pilot, sir.

Q. Cruising at that time for vessels?

A. Yes, sir.

Q. Did you have any interest in her?

A. No, sir; that is, I had no interest as to ownership. I was working in her as a journeyman.

Q. When did you first know of the making of the City of Washington?

A. It was after 11 o'clock.

Q. Where were you at the time?

A. In the cabin, sitting on the locker.

Q. Whose watch was it on deck?

A. Mr. Baillie'.

Q. Did you at any time see the lights of the steamer?

A. I did, sir; shortly after it was reported.

Q. What light did you see first?

A. The masthead-light.

Q. Where away did it bear from you?

A. I am positive it bore about south-by-east, as near as I could judge from looking at the compass, on our port quarter.

Q. And about how far off?

A. She was between four and five miles.

Q. What was the next light you saw?

A. I saw the whole three.

88 Q. Where were you standing at that time?

A. In the companion-way, sir; a neck that shelves out of the companion-way.

Q. Describe what took place after you saw the whole three lights.

A. I was standing in the companion-way. When the steamer was reported I saw her masthead-light, and we showed them our torch-light. I picked up the glasses and took bearings off that way direct, and looked with the glasses and saw all three lights heading for us, and I remarked that she was heading for us, and Magee got ready to go in the boat. All hands were on deck at this time. She still kept coming for us, and we moved the yawl out, knowing that he was coming under our stern. Then he ported his helm again and showed nothing but his red light and masthead-light.

Q. Before the yawl left?

A. We saw that he ported his helm, and then we let go of the yawl and it dropped astern. I had seen the whole three lights, and saw that he had ported his helm. At first I saw one light, and then I noticed them with the glass, and saw all three heading directly at us; then I noticed that he ported his helm, and we let go the yawl and the yawl dropped astern. The ship was some distance off at the time.

Q. What lights did you see that were an indication that he had ported?

A. By shutting in the green light and showing the red.

Q. After your yawl dropped astern what lights did you see?

A. Nothing but his masthead-light and red light.

Q. When you saw his red light, did you see any lights on the port side?

A. Yes, his cabin-lights, saloon-lights on the port side.

89 Q. Did he at any time after that open his green light to you?

A. Not until just before he struck. I was standing in the cockpit, and Baillie was at the helm, and the first thing we knew, we see the ship had starboarded.

Q. What made you think so?

A. Because we had seen the red light, and the mast-head light, and by starboarding his helm he showed all three lights, and shut in his red

light, and showed his green. We see the green light plain when he starboarded his helm.

Q. How long was it between that and the time the collision occurred?

A. I don't think it could have been more than 3 or 4 minutes, as near as I can judge.

Q. How far do you think the steamship was off at that time, as to length of the steamship, when he opened his green light and shut in his red light; the last time, just before the collision? When he starboarded his helm?

A. About three times the length of the ship, as near as I can judge. The ship was coming ahead quite fast. I could see the water under her bow.

Q. Could you see her hull at that time?

A. Yes, sir.

Q. Where did the steamer strike you?

A. With his bowsprit, that caught our mainmast first, and then her stem struck.

Q. Where were you standing at that time?

A. In the cockpit. I run up out of the companion-way into the cockpit.

Q. How severe a blow was it?

A. Severe enough to break her mainmast in 3 pieces and turn the boat over on her broadside. Hobbs I could see amidships plainly; she went so much over that he stood on the outside of her.

90 Q. How did you get aboard the steamship?

A. I was hauled up over the bow by a line, sir.

Q. After he starboarded, did you at any time see the light by his ladder, where they were to take the pilot?

A. I had already seen that light when he was coming at us.

Q. After he starboarded, did you see it then?

A. No, sir, not then, because I let go our yawl. I couldn't see on the starboard side of her then.

Q. How did you get on board of the steamship?

A. Hauled up with a line over the port bow, from the fore-rigging of the pilot-boat; this was after the collision, just as they went clear.

Q. How had the vessels swung, if they had swung at all?

A. The pilot-boat's bows had swung down on the steamer's port bow; she struck us a glancing blow.

Q. How long do you think it was from the time of the collision till the time the boat sunk?

A. Not over fifteen or twenty minutes. I was very cool, standing alongside of Capt. Jones at the time, to see the last of her.

Q. Did you see the light in the yawl at the time the steamship struck you?

A. No, sir; I wasn't looking at that, I was looking at the ship, not at the yawl.

Q. Do you know where the yawl had got to at the time the steamship struck you?

A. I suppose she must have been on the ship's quarter.

Q. But you didn't see her?

A. No, sir; I wasn't looking at the yawl, I had enough to look after myself, with the spars a-falling.

Q. Are you familiar with the way that pilot-boats approach steamships, when they come towards the pilot-boat?

91 A. It depends on circumstances how you make their bearings; in such a case as this, when they are hauling for you, we steer to

get ahead of them, and they stop the ship, and generally make the lee on one side or the other, indicating which side they wish it to be by a light over the side, showing which side the pilot should board. In this case the ship put her light on the starboard side, and for that reason she should have stopped, and not starboarded her helm. It is always usual in such cases.

Q. On what side of the steamship did the men from the pilot-boat get on board of her?

A. From the port side.

Q. At the time they came on board of her, where was the lee side? At the time the men came on board was the port side her lee side?

A. Yes, the lee side.

Q. Which way was the wind that night?

A. Northwest to northwest by north.

Q. Any fog?

A. No, sir; no fog.

Q. Snowy?

A. Something similar to to-day.

Q. How far could you see a vessel's light?

A. Seven or eight miles; 7 miles at least, a steamship's light.

Q. If this steamship hadn't changed her course, where would she have gone?

A. She would have gone under our stern, at the time when I let go the yawl.

Q. (By the Court.) The fault of the steamer was in changing her course, starboarding her helm?

A. I think it was, sir.

92 Cross-examination by Mr. Owens.

Q. Now, Mr. Pilot, where were you when the steamer was reported?

A. Below in the cabin, sitting on the locker.

Q. Did you go immediately on deck?

A. Yes, sir. I was very anxious to see her, we had been waiting a week for vessels.

Q. When you first came on deck how was your vessel heading?

A. About west-southwest half west, Baillie at the wheel.

Q. And the wheel had been unfastened?

A. She was already kept away on her course.

Q. How did the steamer's lights bear?

A. About south by east.

Q. Would that be off your port quarter?

A. Yes; a little forward of the beam, we were heading southwest by west.

Q. How far from you at that time?

A. 4 or 5 miles.

Q. What lights did you see?

A. Her masthead-light; bright light; large light.

Q. Did you stand for her before you noticed she was steering for you?

A. Yes, sir.

Q. How long afterwards before you discovered she was standing for you?

A. Before I saw her colored lights, a very little while. I pulled out the glasses and looked at the steamship, and I saw her lights were all in view, and I made the remark that she was coming right at us.

Q. That was the first that you knew that she was coming directly towards you?

A. Yes, sir.

93 Q. At this time that you saw the whole 3 lights?

A. Yes, sir.

Q. How far was she from you then?

A. See must have been at least 3 miles off, or a little more, probably.

Q. How fast were you going at that time?

A. Between 3 and 4 knots, course southwest by west.

Q. You kept on that course?

A. Yes, sir.

Q. How did she bear from you when you dropped your yawl?

A. The steamship had been ported, and she was on our quarter. She was heading this way.

Q. Which side of the steamer was toward you then?

A. Her port bow was toward our stern, coming under our stern.

Q. When did you see the light at the companion-way?

A. When she was heading at us.

Q. Any time afterward?

A. No, sir, I did not; not till after I got aboard the steamship; I seen it, and I made the remark.

Q. Wasn't that light visible all the time from the schooner?

A. No, sir; he had ported his helm, and shut it in.

Q. How far was the steamer away when she ported her helm?

A. I should judge about three miles.

Q. When she made the next change, as you suppose, how far?

A. I suppose she must have been a mile off.

Q. What change next?

A. She again ported, and shut in her green light.

Q. What next did you observe in her changing?

A. The first thing we knew then, she was right on top of us.

94 Q. How far was he from you when you say he starboarded his helm?

A. Not over two ship's length.

Q. How far was your stern from his bow at the time when he starboarded his helm?

A. He was about two ship's length, I should say, sir.

Q. And you were on the port side?

A. Yes, sir; we had crossed over on his port bow.

Q. How long before that had you dropped your yawl-boat?

A. About a minute and a half, or two minutes.

Q. Was it out of sight?

A. Yes, the yawl was out of sight; but if they had held their light up in the boat we could have seen it.

Q. Was it out of your sight?

A. Yes; because it was on the other side of the steamship from me.

Q. When you discovered that she had starboarded her helm, you had already passed her bow and got over on her port side?

A. Yes; and she was about two lengths off.

Q. And going how fast?

A. Between three and four knots.

Q. Were you going free?

A. Yes; wind about northwest by north.

Q. And how must the steamer have headed?

A. Northwest; or northwest by north.

Q. Would that have brought her starboard-light to your view?

A. Yes; she altered her course about three points or three and a half, I should judge, from the position she was in.

(The witness here explains to the court the relative positions, with models.)

95 Re-direct:

Q. Did you have any conversation with Captain Jones that night?

A. Yes, sir; some.

Q. Did he tell you what he tried to do on board of his ship?

A. He said he was trying to close in on us.

Q. What was the conversation?

A. I was pulled up on board the ship over the ship's bow. I knew this man was overboard, and no one knew what became of him, so I at once went and hollered off the forecastle for them to pull the yawl back and save the man. Then I went upon the bridge and saw Captain Jones, and asked him what he was trying to do, and he said "I was trying to close in on you," and I made the remark to Captain Jones if he hadn't better have the ladder removed to the port side for the men to get up on deck by, and when the men got up two of them were exhausted, and had to be put into hospital. I staid up with Captain Jones on deck, and Magee went into the yawl again. That was about all the conversation there was; nothing more than his closing in on us and the shifting of the ladder.

Q. What was the reason the ladder was shifted from the starboard to the port side?

A. Because the ship had veered so it made the lee on the port side.

JEREMIAH CONRY called and sworn for libellants.

Q. Were you on the pilot-boat John D. Jones in March last?

A. Yes, sir.

Q. When this collision took place?

95 A. Yes, sir.

Q. Did you go in the yawl with Magee?

A. Yes, sir.

Q. One of the men that was rowing?

A. Yes, sir.

Q. Did you turn the yawl around and row the same way the steamship was going?

A. Yes, sir.

Q. How many men were in the yawl?

A. Mr. Magee and another man and myself, sir.

Q. Did the steamship go by you at any time?

A. Yes, sir.

Q. How were you and the other man pulling?

A. With the ship just as hard as ever we could.

Cross-examination:

Q. How old are you?

A. I am going on 21.

Q. How old was the other boy?

A. The other man is a middle-aged man, I suppose 35.

Q. Do you mean to say that you were behind the steamer at any time, or alongside?

A. Pulling with the ship.

Q. So that you always sustained a position alongside or abreast of her?

A. Yes, sir.

Q. (By the court.) Did you notice the white water from the propeller of the steamer?

A. Yes, sir.

Q. What did you see about that?

A. When I noticed the white water, we was a little abaft of the mizzen rigging. The ship had then commenced to deaden her way,
97 when we pulled out and got ahead of her: we was abaft the mizzen rigging, but the white water didn't reach us.

Q. Did you notice it at the time?

A. Yes; we never noticed the white water till Mr. Magee sung out for them to back at full speed, so that she wouldn't hit the schooner, and then she had hit the boat when we noticed the white water.

Cross resumed.

Q. When you left the schooner in the yawl, what did you make for?

A. To row with the ship, so we could get to the side. We headed for this light hung down forward of the main rigging.

Q. About amidships?

A. I guess it was a little abaft of amidships.

Q. And you saw that when you left the schooner?

A. Yes; and we headed for it the whole time.

Q. And that was what you steered to reach when you left the schooner?

A. Yes, sir.

Q. And you saw it?

A. We didn't pull right straight for it; we had it in view; we didn't pull at all to get at that light. The ship was going ahead so fast, we was pulling to keep up with her.

Q. When did you pull with the ship?

A. We were just a little bit forward of the forward rigging when we turned around to pull with the ship.

Q. From the time of leaving in the yawl to the time of getting to the ship, you headed to reach this light?

A. We headed for that light in the gangway.

Q. You saw it from the schooner, from the time you left the schooner?

A. I couldn't say for certain. We have got to go by our orders when we are pulling in the boat. No, sir; didn't see it.

98 Q. What was you steering for when you left the schooner?

A. We was attending on our orders.

Q. When you left the schooner you saw this light, and headed for it in some way?

A. I suppose we had left the schooner some two or three minutes.

Q. You remember, just before you got over the side of the schooner, that you saw the light?

A. I got in the yawl, and was looking after the yawl, sir, and hove her out.

Q. You saw that light before you left the schooner, this bright sidelight?

A. No, sir; I didn't.

Q. What did you make for if you didn't see it?

A. I didn't see it; I had to go by orders.

Q. Will you swear that you didn't see that before you left the schooner?

A. Yes, sir; I will.

By Mr. Owens:

Q. When Mr. Magee said for them to stop the ship, that was to enable you to reach that white light?

A. Yes, sir.

THOMAS AITKEN, called and sworn for libellants.

Q. What is your business?

A. Sandy Hook pilot, sir.

Q. How long have you been Sandy Hook pilot?

A. 18 years next April.

Q. Are you a pilot on the J. D. Jones?

A. Yes, sir.

Q. Not on board at the time she was lost?

A. No, sir; I was on board the steamship Queen.

99 Q. When a pilot-boat wishes to put a pilot on board a steamship coming right to the pilot-boat, what are the manœuvres? What is the custom of approaching the steamship?

A. Well, when a steamship is coming right at you, when they make the pilot-boat at night and see the flash-light, they generally steer right for it, which generally brings the pilot-boat right ahead, and we generally drop the yawl ahead of the steamboat, and she stops and picks them up; that is the rule when they are coming right at you.

Cross-examination:

Q. That depends very much on circumstances?

A. We generally board the steamers as quickly as we can, for they count their passages by minutes. I have known it to be the case when you drop your yawl astern of the steamship that she wouldn't stop for you.

Q. You know very often that steamers keep in motion, don't you?

A. In a dark night they generally lay the ship still. In day-time, when they can see, they have more or less headway.

Q. I mean the rule is not invariable for steamers to come to a full stop. You have known cases where they have not?

A. Yes, on mild, fine nights I have known it; but on squally nights they generally try to pick them up with safety.

Q. It generally depends on circumstances?

A. Yes, sir; somewhat.

Q. How about manœuvering the vessel?

A. After we drop the yawl to the steamer, we generally wear the boat around, and get to the yawl as quick as we can.

100 Q. (By the Court.) And do you generally cross the steamer's bow?

A. Yes, sir.

Q. You expect to have the yawl board her on the lee side?

A. Yes, sir; the yawl boards her on the lee, and we go right around her on the weather side.

Q. Don't you as often go around on the lee side?

A. That depends on what tack you are on. If you are on the starboard tack, you put your helm up and go around on the starboard or lee side. And if on the port tack you just do the contrary. It depends entirely on the tack.

(Proof suspended; to be completed within forty days from this date, 16th November, 1871.)

DEC. 23D, 1871, 2 p. m.

Examination continued; both sides present.

THOMAS CHARLES JONES called and sworn for claimants.

Q. You are a master mariner?
A. Yes, sir.
Q. How long have you been engaged in navigation?
A. Since the 8th of August, 1846.
Q. How long a time have you been master mariner, about?
A. About ten years in command of steamships.
Q. Do you remember the circumstances of this collision which occurred in March last?

101 A. Yes, sir.

Q. You were then in command of what vessel?
A. The City of Washington, screw steamer.
Q. Where were you stationed about the period of this trouble?
A. The light having been reported to the officer of the watch, I went on the bridge. I was the master.
Q. You went on the bridge and remained there up to what time?
A. Till I saved the men off this pilot-boat.
Q. Can you give any testimony about the wind that night?
A. The wind was about northwest—northwest by north.
Q. And what was the condition of the waves?
A. It had been blowing hard the previous day, and there was a considerable swell—a fresh breeze, with frequent snow-squalls.
Q. You went on the bridge, and what did you see?
A. I saw the pilot-boat bearing about north; that is, the flash-light of the pilot-boat, which indicated her position.
Q. See anything of her hull or sails?
A. No, sir; only the flash-light.
Q. How far off?
A. Impossible to judge; I merely give the direction.
Q. You then were making for what?
A. West by north, for Sandy Hook.
Q. The pilot sighted you first?
A. Simultaneously, I suppose, sir; or rather she must have seen us first, for her flash-light was to indicate her position.
Q. Then what did you do?
A. Put the helm to port, and altered her to northward by west, the pilot's light bearing north, to close on her.

102 Q. What is the meaning of that expresssion, "to close on her?"
A. To approach her.

Q. Then the expression in the testimony said to have been used by you—that is the explanation of it?
A. Yes, sir; to drive ahead, to approach, to close in, to diminish the distance between two objects.
Q. Now, as regards the lights of this pilot-boat, what light did you see during the whole time?
A. The flash-light.
Q. Any other light?
A. No, sir.
Q. Any masthead light?
A. No, sir; she had no masthead light.
Q. You then altered your course in what way?
A. From west by north, which was for Sandy Hook, to northward by west.

Q. Was there any order given as regards the movements of the engines and when?

A. I approached her to what I considered a safe distance. But you must understand that on such a night as this night was of course it was very difficult to judge distances—almost impossible.

Q. What order did you give with reference to the engine, and when?

A. First "half-speed," and then "slow."

Q. When did you show your globe-light?

A. After the engines were stopped.

Q. Before you showed the globe-light, you had done what in the way of orders to the engine-room?

A. The engines were stopped.

Q. You showed the globe-light where?

A. At the starboard gangway.

Q. How far from the stem of the vessel?

103 A. About the centre of the ship, before the main rigging.

Q. What indications did you then see from the pilot-boat of her movements?

A. I saw the small light passed into the yawl, into the punt.

Q. You couldn't see the hull, then?

A. Nothing but the light; the fact of the light being so low, on the surface of the water, assured me that the man had been lowered from the pilot-boat.

Q. Up to the time the yawl left the schooner, what was the relative position of the schooner to your vessel; how did she bear?

A. In their anxiety to get the yawl out of the schooner they had ceased to burn their flash-light; they had no light then, and the night was so dark it was impossible to distinguish the boat, and I only knew the fact that the yawl had left the schooner by seeing the small lantern that the pilot carries in his hand on the surface of the water.

Q. At that time how did that yawl, where you saw the light, bear from you?

A. About two points on the starboard bow; it might have been more, but two points certainly.

Q. What was the apparent position of the last flash-light that you saw?

A. That was about the time of the yawl leaving the schooner.

Q. How frequent were those flash-lights about?

A. Whilst we were approaching her, there had been long intervals between the flashes, which made me anxious; and, to induce them to indicate their position, I had burnt several blue lights, to which they answered with their flash-light. I did that because they had no position-light to indicate their position.

104 Q. What did you next see as regards the movements of this yawl towards your vessel, if any?

A. My own ship then lay, to the best of my belief, perfectly still. Any man looking over the side would have considered that she was perfectly still. I saw the yawl on our starboard bow, probably half a ship's length. I could see her position indicated by the small lamp—half a ship's length, coming towards me, pulling right in for my fore-rigging, and my attention was then given to the yawl, and I ordered the quartermasters to be attentive to the man in the yawl, and to assist him up with his clothes, and pull up his baggage, and whatever he had brought with him; and I disregarded the schooner altogether, considering that she was clear, and intending to assist the man up the ship's side, as there was a considerable lap of sea on.

Q. Was there any change in the position of the schooner, so far as you could observe?

A. I had never seen the schooner up to the time at which we have now arrived.

Q. No light to indicate her position?

A. No, sir.

Q. Now, at the time you saw the yawl, as you have just stated, in that vicinity of your vessel, how far did you say she was away?

A. About a hundred feet, or fifty.

Q. What had been the last order given to the engine-room, and what was the condition of your vessel as regards movements?

A. The engines had been reversed, but I considered her way was so thoroughly stopped that I had stopped the engines at the time we have got to now, you know. The engines had been reversed, but I considered her way stopped, and the engines were stationary.

105 Q. Was there any perceptible progress of the vessel, so far as you could judge, at that time?

A. To the best of my belief, I believe there was no motion at all.

Q. Except the movements occasioned by the swell?

A. That is all.

Q. Is it necessary to have some sort of a movement or headway in order to regulate their steerage, and your control over that?

A. After you give yourself up, then you don't consider the steamer yours any longer. When you give yourself up to the pilot she should have headway, but not much. The steamer has headway almost invariably.

Q. To what extent is she in motion when the yawls board her?

A. Just a gentle motion that enables the boat to tow.

Q. Is that usual?

A. It is usual, and it is more convenient for the yawl if the steamer should have a slight headway.

Q. Is it as usual in the night as in the day-time to have that slight movement?

A. Yes, sir.

Q. What was the next manœuver or next operation?

A. Being, as I have already stated, engaged in looking over the side to see the man coming alongside—it was then almost alongside, at the time I speak of now, about 50 feet off, probably 20—the second officer called my attention to the fact of the sails of the pilot-boat, which were then visible about a point on our starboard bow, which of course surprised me, and I reversed at full speed immediately.

Q. Did you see those sails, and how near was the schooner to you?

A. The collision was inevitable then.

Q. Was that the first time you saw her?

106 A. Yes, sir.

Q. Did you see any light on her then?

A. I saw a light burning on her fore bitt, sir, apparently.

Q. Any other?

A. No other.

Q. Now, as respects this starboarding of the helm that has been spoken of, when did that occur, if at all?

A. The only time the helm was starboarded was after the engines were stopped, at the time I have described as looking over the side to see the pilot come alongside. The helm was put hard astarboard. Considering that the schooner was on my starboard, and would remain

there, I had the helm starboarded, but it had no effect on the ship, because the way was stopped.

Q. Then you starboarded the helm and changed her direction, and put her on a different course?

A. It had no effect. That is the first order which the pilot would have given when he came on board; he would have said "hard astarboard." It had no effect whatever on the ship.

Q. How far did the vessel go or swing on that starboarding?

A. None at all, sir; at the time that occurred the collision was inevitable.

Q. Describe that as you saw it.

A. I was standing on the bridge; my attention was attracted to the man in the yawl coming alongside, when the second officer said, "Here is the schooner." I was looking over the side, and I then looked forward and saw the sails of the pilot-boat from the bridge; and I could see very distinctly the light on her fore bitts.

Q. Not on the mast-head?

A. Certainly not; because I could have seen it at that time if it had been there.

107 Q. Inside or outside?

A. Through on the bitts.

Q. So as to be covered by the bulwarks?

A. It appeared to be stuck between the two fore bitts.

Q. Describe the collision of the two vessels. After you saw the schooner, what then happened?

A. The second officer said to me, "She will be into us;" and says I, "Back full speed," and she came into us right at once.

Q. Did that have any effect?

A. The engines acted instantly; the screw began to revolve, and turned up the white water, and the ship began to go astern, so much so that the white water from the screw had got as far forward as the mizzen rigging, I should say roughly, proving that the ship was actually going through agitated water before she struck. From the time of my sighting the schooner it was only a matter of three minutes; a matter of nothing in time.

Q. How far abaft of the stem was this mizzen rigging?

A. Well, the three masts—everybody knows how they are placed. The ship is 356 feet in length; one-third from the stern and two-thirds from the stem.

Q. Describe the position of the vessels?

A. She was still close to us, about on the starboard bow, distinctly crossing; and when as Baillie says in his evidence that he put the helm down—he was then on our starboard bow—to try and bring her to the wind, the merest thing, and our engines working astern a little more, would have carried us clear; and I don't think our jib-boom would have touched his mast; and when we did meet I think that our jib-boom end caught that wire-rope and pulled the whole thing down after it. I don't believe we struck the schooner, and then the swell did the rest.

108 Q. How did she approach?

A. Evidently going across our bow.

Q. Was her bows slanting towards you or away from you?

A. When he put his helm down he saw that he had made a mistake, and he put his helm alee to go around.

Q. What tack was she on?

A. Starboard tack.

Q. About what time of night?

A. Midnight, as near as possible.

Q. You have heard the testimony as to your port lights being visible?

A. Yes, sir.

Q. Were they lighted at that hour of the night?

A. They are all put out at eleven o'clock, excepting the lights of the watchman, which don't appear on the ship's side.

Q. Is that rule strictly enforced?

A. It is constantly kept, excepting for a sick passenger on the requisition of the doctor.

Q. How about that night?

A. I am perfectly clear about it. There was nobody sick that night. The lights were out. I may also say that it was not necessary even to put the lights out, for they are screened. Blank dead-lights were drawn over the windows to prevent people from looking into them.

Q. What is the usual maneuver or action on the part of a pilot-schooner, being on the tack that she was, and the wind in this direction, as regards a change in her position in regard to you?

A. Had he followed any other course but the one he did, he would have gone clear of us. It is a first principle at sea never to cross the bows of anything else, to begin with; nobody attempts to cross the bow of another; and in his case, with the wind northwest, and
109 himself coming down southwest, and having approached us, he would have heard my steam-whistle blowing. I blew that when I stopped my engines as a notice to him that my engines were stopped. Under those circumstances he should have put his helm up, and dropped his boat, and then run down under my lee.

Q. Is that the usual manœuver?

A. Yes, sir; any sailor would do that, whether he is a pilot or not. No yachtsman would attempt to cross the bows of another one; it is an outrage against common sense.

Q. State what the weather was as regards seeing a vessel. Were there any lights?

A. The night was dark; no moon; stars be out occasionally between the black, angry clouds; frequent snow-storms; quite cold at the time of the occurrence. A snow-storm was bearing from us about northwest, where they usually form. There was a snow-storm which, after the collision, fell upon us—hail and snow, and that kind of thing; it was very dark.

Q. Was there anything to prevent the manœuvering of that schooner as you have described?

A. No, sir; knowing that we were coming to New York, he knew that our course was west, and that we wouldn't put our head back again; and to accommodate him I had gone out of my course as far as north, and I didn't want to go back to England. The pilot came on board previous to getting the men in.

Cross-examination:

Q. Did you see the lights in your state-rooms put out yourself?

A. I didn't, sir. I can produce the man who did, if you like, sir.

110 Q. When you straightened up towards the pilot-boat, how far to the north is the most that you ever got?

A. North, half west; never anything further than that.

Q. What sails had you?

A. Fore and main trysails and fore staysails.

Q. Had they flattened when you got north half west?

A. Yes, taken aback.
Q. And that made the starboard your lee side?
A. Yes, sir; it did.
Q. You saw these flash-lights of the pilot-boat sufficiently often to determine within half a mile of where she was?
A. That was the trouble; we couldn't attempt to judge distance I could only judge bearings. I couldn't tell within anything at all. on a night like that.
Q. Could you tell within a mile of it?
A. No, sir.
Q. Within a mile and a half?
A. A very difficult thing. I couldn't tell.
Q. You saw her flash-light before she put her punt off to you?
A. Yes, I did; not a great while before it.
Q. And you saw this light in the boat distinctly enough to keep your eye upon it?
A. Yes, sir; I saw the light in the yawl.
Q. And watched it along, and was giving orders to the quarter-masters when your attention was called to the sails?
A. Yes, the fact of the schooner's being so near us.
Q. Did you back out of the pilot-boat after the blow?
A. I waited till I had saved all their lives first, and allowed her to hang on our jib-boom end until everybody was saved or hauled on
111 board. Hobbs, one of them, a pretty heavy man, he hadn't gumption enough to hold on after he was hauled up, and fell back into the water again.
Q. What I want to know is, did you or not back out of the pilot-boat before you got all of the men on board your steamer?
A. Those men that were not on board my steamer were in the yawl before I backed off; that is it, sir, exactly. I didn't attempt to back off till the lives were saved.
Q. There were some men in the yawl after you backed off from the pilot-boat?
A. Yes, certainly.
Q. How many men?
A. That I don't know anything about; Magee will tell you about that; I can't tell; there were some.
Q. How did you get these men on board your steamer?
A. They came up the ladder.
Q. On which side?
A. I don't know; I was on the bridge, you must recollect.
Q. Don't you remember the ladder being changed?
A. Of course; very likely.
Q. Wasn't that the fact?
A. Don't you know what we did that for?
Q. Answer my question. Wasn't your ladder changed from the starboard to the port side to get these men on board?
A. Magee came on in that way.
Q. (Question repeated.)
A. I believe it was, sir.
Q. How long after you backed out from the schooner?
A. Just sufficient time to allow the yawl to leave the schooner and come to the gangway.
112 Q. Did you make any change in your helm from the time that you backed out of the schooner until the yawl came alongside?
A. The helm being put to starboard, I don't think it was shifted at all;

to the best of my belief, it was not changed; I don't think it was; I am not sure.

Q. Backing your ship under a starboarded helm tends to throw, if anything, her head which way?

A. That is a thing we should like to find out very much; as a rule, she goes the way you don't want her.

Q. Backing with your helm to starboard, as a rule, doesn't it throw her head to starboard?

A. As a rule, she goes the way you don't want her to.

By the Court:

Q. Do you mean to say you don't know which way to throw your helm to shift your bow?

A. Yes, sir; there is always a tide-way, or wind, or something. Turning back at full speed, or half speed, with the wind from the northwest would have one effect, and with the wind in another quarter might have another effect; you can't tell.

Cross continued:

Q. When this yawl came on board, wasn't the port side the lee side?

A. Oh, yes; the port side of our ship was the lee side.

Q. Did you give the orders to the officer on the bridge, and he transmit them, concerning the way to put the wheel?

A. Certainly.

Q. And also concerning the engines?

A. Certainly, sir.

Q. And that officer?

A. Has been examined; Fredrick Bolton Thwaites is his name.

113 Redirect:

Q. As regards the lookouts on your vessel that night, who were they?

A. It is a rule to have at sunset two men on the lookout, and two men in the wheel-house.

Q. Were they there that night?

A. Yes, sir; the usual lookouts.

Q. Do you know where these men are that were there that night?

A. They are on the City of Washington. I am now on the City of New York. I have been promoted, but not in consequence of this occurrence.

Q. Is the City of Washington on the other side?

A. I think she is at sea, coming over.

Q. Tell their names?

A. Griffiths and Campbell.

Q. After the blow was struck, do you know whether the effect of that blow was such as to create any change of position in the schooner—that is, swerving by the effect of the blow—her hanging on the bow of the vessel, and its being a pivot to her?

A. Although the starboard side was our lee side when this occurred, the fact of the schooner sailing at the rate of five knots, when she would hit me, and struck the end of my vessel, that would naturally have the tendency to slew me around, and make my port side my lee side; slew me to the west.

Q. Would the blow have also the effect of changing the position of the schooner after the blow?

A. She was hanging on my jib-boom end like a toy.

Q. So she would follow any motion of the steamer?
A. She was dragging; she would scarcely stand a blow; she is a thin shell of a thing.

114 By the Court:

Q. Do you mean to testify that the momentum of this schooner paid you off?
A. No, sir; I didn't say so; I say that is the tendency it would be likely to have.

By Mr. Scudder:

Q. Wasn't her sails set?
A. Yes; and the wind acting on her sails.

By Mr. Owens:

Q. After you struck were you hanging together?
A. Yes, sir.
Q. While you were that way wouldn't the wind and the sea, and the fact of the momentum, have a tendency to turn your head to the westward?
A. I think it was sufficient to throw it around.

By Mr. Scudder:

Q. How many tons is your vessel, captain?
A. A couple of thousand or so, in rough numbers.
Q. The pilot-boat is about a hundred tons?
A. Yes, I suppose so, or one hundred and fifty.
Q. And you had her hung upon your jib-boom?
A. Yes, sir; she was fast; she wasn't pendant; she was attached there by her momentum, with her sails set.
Q. Did the blow injure any portion of your ship?
A. I have yet to find out any injury by that blow; it did give me a little surprise; my ship was not marked at all; not a mark on her paint; her paint not scratched.
Testimony closed.

115 U. S. district court, eastern district of New York.

Scudder & Carter.
Platt, Gerard & Buckley.

PETER R. BAILLIE,
vs.
THE STEAMSHIP CITY OF WASHINGTON, ETC.

JUNE 3D, 1872.

BENEDICT, J.

This action is brought by the owners of the pilot-boat John D. Jones to recover of the Steamship City of Washington some twenty thousand dollars for the sinking of that pilot-boat, in a collision, which occurred between those two vessels on the night of March 28th, at sea, and about 200 miles from Sandy Hook.

The steamer, bound to the westward, at about 11 p. m. discovered the flash-light of a pilot-boat to northward about abeam, and some four or five miles distant. She replied to the signal indicating that she wished to receive a pilot from the boat, and altered her course to about N. W. by N. to meet the boat. The boat on her part kept away to the

southward and westward to meet the steamer, showing her torches as she proceeded. The courses of the two vessels were thereafter crossing each other with fresh breeze of wind.

When the two vessels had approached within four or five lengths of each other the steamship had hauled up sufficiently to make her starboard side the lee side, and she showed a light on her lee side to
116 guide the pilot to his place to board the steamer; and a pilot left the pilot-boat in the yawl, having with him a light, to pull to the light on the starboard side of the steamship. Before the pilot had time to reach the steamer in the yawl the pilot-boat was under the steamer's bows, and was struck by the steamer on her port side, causing her to sink and be lost.

The negligence charged upon the steamer as the cause of this loss is, that she starboarded her helm, whereby the pilot-boat was brought under her bows, and that she did not back in time to stop her way before she struck the pilot-boat. The starboarding is admitted in the answer; and, under the circumstances disclosed by the evidence, I consider it negligence. The course of the pilot-boat was known to be crossing that of the steamship's, the breeze was fresh, and it was known to the steamship that at her request the pilot-boat was endeavoring to place a pilot on board her. This manœuvre the pilot-boat was entitled to be permitted to accomplish without embarrassment from the steamer; certainly the steamer, by starboarding and giving herself a course across the course of the pilot-boat while the yawl which was to be picked up by the boat after the pilot was placed on the steamer was in the act of passing to the steamer, attempted a manœuvre which cast upon her the risk of its success. I think, also, that it was the duty of the steamship to stop still before she reached the pilot-boat; instead of which she was kept moving ahead, slowly, it is true, but yet with a momentum which, with the starboarding, brought her upon the pilot-boat and sank it. I must, therefore, hold the steamer responsible in this action by reason of these faults. The only remaining question is, whether the pilot-boat must not also be held in fault for not having the masthead-light, which the
117 law requires. It is conceded that the pilot-boat had no such light, and the burden is therefore on the pilot-boat to show that the absence of such a light did not contribute to the collision. This is made to appear by the clear proof given by the witnesses for the steamship that the other lights of the pilot-boat were seen by them. Her exact position was known by those on the steamship, as appears from the fact that they saw the light which the pilot carried when he went into the yawl. I consider, therefore, that the evidence shows beyond dispute that the absence of the masthead-light in no way contributed to the accident. Furthermore, the absence of the masthead-light is not set up in the answer as an act of negligence, nor is its absence alluded to therein. I therefore cannot hold that the fault of the pilot-boat in not having a masthead-light renders her chargeable with any part of the loss.

The decree will accordingly be in favor of the libellant, with an order of reference.

118 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 3rd day of June, in the year of our Lord one thousand eight hundred and seventy-two: The honorable Charles L. Benedict, district judge.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, HER tackle, &c.

This cause having been heard upon the pleadings and proofs, and submitted upon the briefs and arguments of the advocates for the respective parties, and due deliberation having been had thereon:

Now, on motion of Scudder and Carter, proctors for libellants, it is ordered, adjudged, and decreed that the libellants herein recover the damages by them sustained by reason of the matters alleged in the libel herein, and that the said steamship City of Washington be condemned therefor.

And, on like motion, it is further ordered that it be referred to Samuel T. Jones, esq., one of the commissioners of this court, to ascer-
119 tain the amount due the libellant, and report thereon to this court with all convenient speed.

CHAS. L. BENEDICT.

(Endorsed:) Interlocutory decree and order of reference. Filed and entered the 5th day of June, 1873.

Commissioner's report.

U. S. district court, eastern district of New York.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, HER tackle, &c.

To the Hon. Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order of reference, made and entered in the above-entitled cause, by which it was referred to one of the commissioners of this court to ascertain the damages sustained by the libellants and parties hereinafter named by reason of the collision and loss mentioned in the libel, and report thereon to the court, I, Samuel T. Jones, United State commissioner, to whom the matter was referred, do respectfully report:

That I have been attended on such referrence by the proctors
120 for the respective parties appearing in the cause, and have taken and herewith report the proofs offered by them, from which I find that the libellants and parties hereinafter named have sustained damages by reason of said collision and loss, as follows, to wit:

Value of the pilot-boat J. D. Jones at time and place of loss	$13,000 00	
Interest on same, at 7 per cent., from April 3, 1871, time of filing libel, to August 27th, 1873, date of this report—2 years, 4 months, 24 days	2,184 00	
Making total damages sustained by said libellants as joint owners of said pilot-boat		$15,184 00
Value of personal effects of parties hereinafter named, lost on board the said pilot-boat, as follows:		
Peter R. Baillie	$270 50	

Interest on same from April 3, 1871, to Aug. 27, ...		45 44	
Making damages sustained by Peter R. Baillie individually			315 94
William H. McGee.....		$366 50	
Interest on same as above.....		61 57	
Making total damages sustained by Wm. H. McGee individually			428 07
John Holbbs		$418 10	
Interest on same as above.....		70 22	
Making total damages sustained by John Hobbs individually			488 22
Thomas Aitken.....		$162 00	
Interest on same as above.....		27 22	
Making total damages sustained by Thomas Aitken individually			189 22
Frederick V. Baudier.....		$191 50	
Interest on same as above.....		32 17	
Making total damages sustained by F. V. Baudier individually.....			223 67
121 William A. Griffiiths.....		$280 75	
Interest on same as above.....		47 17	
Making total damages sustained by W. A. Griffiths individually			327 92
John Mahoney		$116 00	
Interest on same as above.....		19 49	
Making total damages sustained by John Mahoney individually			135 14
John Francis		$96 00	
Interest on same as above.....		16 12	
Making total damages sustained by John Francis individually.....			112 12
Jeremiah Carney		$101 75	
Interest on same as above.....		17 09	
Making total damages sustained by Jeremiah Carney individually.....			118 84
Michael Neiland.....		$100 00	
Interest on same as above.....		16 80	
Making total damages sustained by Michael Neiland individually.....			116 80
Luther R. Murphy.....		$227 00	
Interest on same as above.....		38 14	
Making total damages sustained by L. R. Murphy individually			265 14

Theodore C. Robinson	$116 62	
Interest on same as above	19 59	
Making total damages sustained by T. C. Robinson individually		136 21
		$18,041 64

making as total damages sustained by the libellants and parties above named, by reason of the said collision and loss, as ascertained at
122 the date of this my report, eighteen thousand and forty-one and $\frac{64}{100}$ dollars, ($18,041.64.)

All which is respectfully submitted.

SAMUEL T. JONES,
U. S. Commissioner.

Dated August 27th, 1873.

(Endorsed:) U. S. district court, eastern district of New York. Peter R. Baillie and others vs. the Steamship City of Washington, her tackle, &c. Commissioner's report. Confirmed this 3d day of September, 1873, and ordered to be filed, Charles L. Benedict. Filed Sept. 3d, 1873.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-house in the city of Brooklyn, on the sixth day of October, in the year 1873: Present, the Hon. Charles L. Benedict, district judge.

PETER R. BAILLIE AND OTHERS, LIB'L'TS,
vs.
THE STEAMSHIP CITY OF WASHINGTON, HER engines, and the Liverpool, New York and Philadelphia Steamship Company, claimants.

123 The report of the commissioner, to whom it was referred to ascertain the amount due to the libellants herein by reason of the matters in libel alleged, having been presented to the court, by which it appears that on the 27th day of August, 1873, the date of said report, *that* there was due to the several libellants the following amount, to wit: To the libellants, Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Fred'k V. Baudier and Mary A. Clark, owners of the pilot-boat J. D. Jones, the sum of fifteen thousand one hundred and eighty-four dollars, ($15,184;) to the libellant Peter R. Baillie, loss of personal effects, the sum of three hundred and fifteen $\frac{94}{100}$ dollars, ($315.94;) to the libellant Wm. H. McGee, loss of personal effects, the sum of four hundred and twenty-eight $\frac{07}{100}$ dollars, ($428.07;) to the libellant John Hobbs, loss of personal effects, the sum of four hundred and eighty-eight $\frac{22}{100}$ dollars, ($488.22;) to the libellant Thomas Aitken, loss of personal effects, the sum of one hundred and eighty-nine $\frac{22}{100}$ dollars, ($189.22;) to the libellant Frederick V. Baudier, loss of personal effects, the sum of two hundred and twenty-three $\frac{67}{100}$ dollars, ($223.67;) to the libellant Wm. A. Griffiths, loss of personal effects, the sum of three hundred and twenty-seven $\frac{92}{100}$ dollars, ($327.92;) to the libellant John Mahony, loss of personal effects, the sum of one hundred and thirty-five $\frac{49}{100}$ dollars, ($135.49;) to the libellant John Francis, loss of personal effects, he sum of one hundred and twelve $\frac{12}{100}$ dollars, ($112.12;) to the libellant Jeremiah Carney, loss of personal effects, the sum of one hundred

and eighteen $\frac{84}{100}$ dollars, ($118.84;) to the libellant Michael Neiland, loss of personal effects, the sum of one hundred and sixteen $\frac{80}{100}$ dollars, ($116.80;) to the libellant Luther R. Murphy, loss of personal effects, the sum of two hundred and sixty-five $\frac{14}{100}$ dollars, ($265.14;) to
124 the libellant Theodore C. Robinson, loss of personal effects, the sum one hundred and thirty-six $\frac{21}{100}$ dollars, ($136.21,) together, amounting to $18,041.64.

Now, on motion of Scudder & Carter, proctors for the libellants, it is ordered and adjudged and decreed, that the said report be, and the same is hereby, in all things confirmed; and the libellants recover herein the several amounts so reported, amounting together to the sum of $18,041.64, with interest from the date of the said report, amounting to the sum of $136.80, together amounting to the sum of ($18,178.44) eighteen thousand one hundred and seventy-eight $\frac{44}{100}$ dollars, and costs taxed at three hundred and eleven $\frac{85}{100}$ dollars, making in all the sum of eighteen thousand four hundred and ninety $\frac{29}{100}$ dollars, and that said steamship City of Washington be condemned therefor.

And, on like motion, it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against the Liverpool, New York and Philadelphia Steamship Company, the principal, and Peter H. Walsh and John E. Walsh, the sureties, on their bonds given on the discharge of the property arrested for the sum of forty thousand dollars, the amount of their said bond executed on discharging the said steamship from custody, and that the stipulators for costs on the part of the claimants cause the engagement of their stipulations to be performed.

And, on like motion, it is further ordered that, unless an appeal be taken from their decree within the time limited and prescribed by the rules of this court, the libellants have execution to enforce satisfaction hereof.

CHAS. L. BENEDICT.

SCUDDER & CARTER,
Proctors for Libellants.

(Endorsed:) U. S. district court, E. D. of N. Y. Peter R. Ballie et al. vs. Steamship City of Washington, her engines &c. Final decree. Scudder & Carter, proc's for libel'ts. Filed & entered the 6th day of October, 1873.

125 U. S. district court for the eastern district of New York.

PETER R. BAILLIE AND OTHERS, LIBELLANTS,
agst.
THE STEAMSHIP CITY OF WASHINGTON, HER engines, and the Liverpool, New York and Philadelphia Steamship Company, claimants.

GENTLEMEN: The claimants in the above-entitled action appeal from the final decree therein entered October 6th, 1873, to the next circuit court.

Dated October 7th, 1873.

Yours, &c.,

PLATT, GERARD & BUCKLEY,
Proctors for Claimants.

To Messrs. SCUDDER & CARTER,
Proctors for Libellants,
and SAMUEL T. JONES, Esq., *Clerk.*

(Endorsed:) U. S. district court, eastern district of New York. Peter R. Baillie et al. vs. The steamship City of Washington. Notice of appeal. Platt, Gerard & Buckley, 45 William street, proctors for claimants. We admit due service of within notice. New York, October 8, 1873. Scudder & Carter, libellants' proctors. Filed October 8th, 1873.

126 Circuit court of the United States for the eastern district of New York, in the second circuit.

PETER R. BAILLIE, WILLIAM H. MCGEE, John Hobbs, Thomas Aitken, Frederick V. Baudier, Mary A. Clark, William A. Griffith, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, libellants and appellees,
vs.
THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, claimants of the steamship City of Washington, her tackle, apparel, &c., appellants.

To the honorable the judges of circuit court of the United States for the eastern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully showeth:

That on the 3rd day of April, in the year one thousand eight
127 hundred and seventy-one, Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Baudier, and Mary A. Clark, six of the above-named libellants, exhibited their libel in the district court of the United States for the eastern district of New York, against the said steamship City of Washington, her engine, tackle, apparel, and furniture, praying, among other things, for the reasons set forth in said libel, that the said court would pronounce for the claims in said libel set forth, and would condemn the said steamship and all persons intervening for their interest therein, with costs.

That on the said 3d day of April, one thousand eight hundred and seventy-one, the Liverpool, New York and Philadelphia Steamship Company appeared in said suit, and entered and filed their claim to the said steamship, and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of twenty thousand dollars, according to the act of Congress in that behalf passed March 3d, 1847, and according to the course and practice of said district court.

That on the 22d day of April, one thousand eight hundred and seventy-one, the said claimants of the said steamship filed their answer to the said libel in said district court, praying that the said libel be dismissed, and the said libellants condemned in costs.

That the said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on the 16th and 23d days of November, 1871, and 27th of February, 1872, upon the testimony and proofs then adduced by the respective parties, and the said judge having advised thereon, afterwards, on the 3d of June, one thousand eight hundred and seventy-two, made a decree or sentence in said cause, whereby it was sentenced and decreed that the several libellants
128 recover against the said steamship City of Washington, her tackle, etc, the damages by them sustained by reason of the collision

in the libel set forth, with their costs to be taxed, and that it be referred to a commissioner of said district court to ascertain the amount of such damages due to said libellants severally, and report thereon to said district court.

That under the said decree reference was had to Samuel T. Jones, esq., a commissioner of said court, to ascertain the amount of such damages.

That, pending such reference, and on the 23d day of June, one thousand eight hundred and seventy-three, by an order of the said district court, the above-named Theodore C. Robinson, William A. Griffiths, Luther R. Murphy, John Francis, Jeremiah Carney, Michael Neiland, and John Mahoney, were made co-libellants with the persons named in the libel in said cause.

That, by the report of said commissioner, which was filed on the 3d day of September, one thousand eight hundred and seventy-three, it was reported to said court that the damages sustained by the libellants by the collision in the libel set forth, with interest thereon to the 27th day of August, one thousand eight hundred and seventy-three, amounted to eighteen thousand and forty-one dollars and sixty-four cents.

That on the 15th day of October, one thousand eight hundred and seventy-three, the said report was confirmed by the said district court by the final decree thereof, by which final decree it was adjudged that the said libellants recover of the said steamship City of Washington the aforesaid sum of eighteen thousand and forty-one dollars and sixty-four cents, with interest and costs, amounting altogether to the sum of eighteen thousand one hundred and seventy-eight dollars and forty-four cents, and the said steamship was condemned therefor, and, in pur-
129 suance of the act of Congress passed March 3d, 1847, summary judgment was entered against the Liverpool, New York and Philadelphia Steamship Company, the principal, and Peter H. Walsh and John E. Walsh, the sureties on the bond given on the discharge of the property arrested, for the sum of forty thousand dollars, the amount of their said bond.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as said libellants were not entitled to said damages, or any damages, but said claimants were entitled to have said libel dismissed, with costs, in that behalf.

And these appellants, for these and other reasons, appeal from the whole and each and every part of said decree in favor of said Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Baudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, to the next circuit court to be held in said district, and upon the said appeal the said libellants intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court, and they pray that the said decree may be reversed, or such other decree thereupon be made as to said circuit court shall seem just; and that the appellees may be condemned to pay the appellants their costs and damages in the premises.

New York, November 8th, 1873.

PLATT, GERARD & BUCKLEY,
Proctors for Appellants.

J. W. GERARD, Jr., *Advocate.*

130 (Endorsed:) U. S. circuit court. eastern district of New York, second circuit. Peter R. Baillie & al., libellants and appellees, v. the Liverpool, New York and Philadelphia Steamship Co., appellants. Petition of appeal. Platt, Gerard & Buckley, proctors for appellants, 45 William st., N. Y. Filed November 10th, 1873.

Know all men by these presents that we, John E. Walsh and Peter H. Walsh, are held and firmly bound unto Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Baudier, Mary A. Clark, William A. Griffith, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, in the sum of thirty-six thousand seven hundred and seven dollars, to be paid to the said Peter R. Baillie, William H. M. Gee, John Hobbs, Thomas Aitken, Frederick V. Baudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, their executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the Liverpool, New York and Philadelphia Steamship
131 Company, claimant of the steamship City of Washington, her engines, &c., as appellant, has appealed to the circuit court of the United States for the eastern district of New York, in the second circuit, from a decree of the district court of the United States for the eastern district, bearing date the sixth day of October, 1873, in a suit in which Peter R. Baillie, William H. M. Gee, John Hobbs, and others are libellants, against the steamship City of Washington, her engines, &c.

Now, therefore, the condition of this obligation is such, that if the above-named appellant, The Liverpool, New York & Philadelphia Steamship Company, claimants of said steamship City of Washington, her engines, &c., &c., shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against it as such appellant therein if it shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JOHN E. WALSH. [L. S.]
PETER H. WALSH. [L. S.]

Sealed and delivered and taken and acknowledged this 31st day of October, 1878, before me, as to John E. Walsh, and this 3d day of November, as to Peter H. Walsh.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John E. Walsh and Peter H. Walsh, being duly sworn, depose
132 and say, and each for himself says, that he resides in the southern district of New York; that he is worth the sum of seventy-three thousand four hundred and fourteen dollars, over and above all his just debts and liabilities.

JOHN E. WALSH.
PETER H. WALSH.

Sworn to this 31st day of October, A. D. 1873, before me, as to John E. Walsh, and this 3d November, as to Peter H. Walsh.

EDWARD L. OWEN,
U. S. Commissioner.

This bond approved as to form and amount and sufficiency of surety. Dated New York, November 3d, 1873.

SCUDDER & CARTER,
Proctor for Libellants.

(Endorsed:) U. S. circuit court for the eastern district of New York, in the second circuit. Peter R. Baillie and others, libellants, agst. Steamship City of Washington, her tackle, &c., The Liverpool, New York and Philadelphia Steamship Company. Bond for damages and costs on appeal. Platt, Gerard & Buckley, proctors for appellants, 45 William st. Filed this 5th day November, 1873.

133 EASTERN DISTRICT OF NEW YORK, *ss:*

I, Samuel T. Jones, clerk of the district court of the United States for said district, do hereby certify the foregoing document to be a transcript of the record of said court in the cause named at the beginning of the copy made up to be transmitted to the circuit court on appeal, pursuant to rule 53 in admiralty, heretofore adopted by the Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said district court at the city of Brooklyn, in said district, this 9th day of December, in the year of our Lord one thousand eight hundred and seventy-three.

[L. S.] SAMUEL T. JONES, *Clerk.*

134 Stated term, December 29th, 1873.

Present, Hon. Lewis B. Woodruff, circuit judge.

PETER R. BA'LLIE ET AL., LIBELLANT & APPELLEE,
vs.
THE STEAMSHIP CITY OF WASHINGTON, ETC., and the Liverpool, New York and Philadelphia Steamship Company, claimants and appellants.

Cause called. Both sides read. Hearing ordered. Mr. Gerard opens for claimants & appellants. Townsend Scudder, esq., follows for libellant and appellee. Mr. Gerard closes for appellant. Cause submitted. Papers handed up. Decision reserved.

135 Circuit court of the United States for the eastern district of New York.

PETER R. BAILLIE ET AL.
vs.
THE STEAMSHIP CITY OF WASHINGTON, HER engines, &c.

WOODRUFF, *Circuit J.:*

The preponderance of the evidence is, I think, clearly in support of the

decree made in the court below. The pilot-boat, by her flash-light, was seen from the City of Washington at a distance of several miles, and the testimony of the second officer and of the wheelsman of the steamship both show that they saw her movements, and saw that her course was such as would cross the course of the steamship. Other testimony from the pilot-boat shows that the repeated exhibition of the
136 flash-lights must have apprised those on the steamer of her movement in that direction. And even the master of the steamer must have observed her near approach in that direction when he saw the letting down of her yawl to bring a pilot to the steamer with a lantern on board. From that moment his attention was diverted to watching the approach of the yawl, and even according to his testimony the pilot-boat was then nearly ahead. He seems to have trusted to his own supposition that so soon as the yawl left her she would put up her helm and fall off to leeward, (as he thinks she should have done,) and, therefore, paid no attention to her. But she, in fact, continued her course and the weight of the testimony is that she was in the act of crossing the course of the steamer when her yawl left her, if in
137 truth she had not crossed it so as to bring the steamer's port-light into view.

Under these circumstances, and with the knowledge of the course of the pilot-boat most decisively established by the testimony of the second officer and wheelsman, and implied in that of the master of the steamer, it is impossible to say that the collision was in any degree due to the want of a masthead-light on the pilot-boat. It is equally clear that the collision was due to fault in navigation of the steamer. If, as the witnesses from the pilot-boat testify, the pilot-boat had crossed the course of the steamer, so as to bring the port light of the latter into view before the steamer starboarded, then the fault of such starboarding is manifest. If the pilot-boat was only ahead at that moment, still, as
138 her course was to the port of the steamer, such starboarding was improper. In any event, it seems to me that the steamer was in fault in not slowing, and, if necessary, stopping at an earlier moment, and before coming into such dangerous proximity to the sailing-vessel. Indeed, upon the proofs, it was the duty of the steamer to stop to receive the pilot, attempting to board her in the night season. Left to my own unaided judgment, I should have deemed it an improper risk assumed by the pilot-boat when approaching to place a pilot on board a steamer, to put herself voluntarily and deliberately in the path of the steamer, to then lower her yawl for putting the pilot aboard. It would have seemed to me that taking such a position was unnecessary and greatly
139 dangerous; but the proof is without contradiction that this is the custom, and reasons are given for it which to the witnesses seem satisfactory. Doubtless this custom proceeds upon an assumption that the steamer will stop to receive her pilot. Upon the proofs as they stand, I am not able to find it a fault in the pilot-boat that she acted in conformity with this custom, and yet I do not feel quite satisfied that it would not be wiser to take some other position.

The libellants must have a decree for their damages found in the court below, with costs.

140 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second circuit, held at the court-house in the city of Brooklyn, on the 4th day of March, 1874.

Present, Hon. Lewis B. Woodruff, circuit judge.

PETER R. BAILLIE ET AL., LIB'LLTS' & APP'LLEES,
vs.
STEAMSHIP *Ship* CITY OF WASHINGTON, HER TACKLE, &c., The Liverpool, New York and Philadelphia Steamship Company, cl'm't and appellant.

This cause having been brought to this court by an appeal from the decree of the district court in favor of the libellants and appellees, and the same having been heard upon the pleadings and proofs in the district court, and due deliberation having been had, and this court having delivered its opinion and judgment affirming the decree of the district court, it is now, on motion of Scudder & Carter, proctors for the libellants and appellees, ordered, adjudged, and decreed that the said
141 decree of the said *decree of the said* district court be, and the same is hereby in all things affirmed, and that the Liverpool, New York and Philadelphia Steamship Company, the appellants, pay to Peter R. Baillie and other libellants and appellees the sum of eighteen thousand four hundred and ninety & $\frac{29}{100}$ dollars, being the amount directed to be paid by the said district court by its decree dated October 6th, 1873, together with the sum of five hundred and twenty-four and $\frac{90}{100}$ dollars, being the interest thereon from the time of the entry of the decree last aforesaid, and also the cost of said appellees in this court, taxed at the sum of one hundred and sixty-two and $\frac{25}{100}$ dollars, amounting in all to the sum of nineteen thousand one hundred and seventy-seven & $\frac{44}{100}$ dollars, and that the appellees have execution therefor.

And it is further ordered that a summary judgment be, and the same is hereby, entered against the said The Liverpool, New York and Philadelphia Steamship Company, the principal, Peter H. Walsh and John E. Walsh, the sureties, for the sum of thirty-six thousand seven
142 hundred and seven dollars, the amount of the bond and stipulation given on appeal herein, and that the appellees have execution therein to satisfy this decree.

L. B. WOODRUFF,
Circuit J.

(Endorsed:) Circuit court. E. D. of N. Y. Peter R. Baillie et al., lib'll'ts & app'lees, vs. Steamship City of Washington, her tackle, &c., The Liverpool, New York and Philadelphia S. S. Co., cl'm't & app'l'ts. Decree. Scudder & Carter, proc's for appellees. Filed and entered this 9th day of March, 1874.

143 Circuit court of the United States for the eastern of New York, in the second circuit.

THE STEAMSHIP CITY OF WASHINGTON, HER TACKLE, &c., The Liverpool, New York, and Philadelphia Steamship Company, claimants & appellants,
vs.
PETER R. BAILLIE, WILLIAM MCKEE, JOHN HOBBS, Thomas Aitken, Frederick V. Boudier, Mary A. Clark, William A. Griffiths, Johny Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, libellants & appellees.

To the honorable the Supreme Court of the United States:

The appeal of the Liverpool, New York and Philadelphia Steam-

ship Company, the above-named claimants and appellants, respectfully showeth:

144 That on the third day of April, in the year one thousand eight hundred and seventy-one, Peter R. Baillee, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Boudier, and Mary A. Clark, six of the above-named libellants, exhibited their libel in the district court of the United States for the eastern district of New York, against the said steamship City of Washington, her engine, tackle, apparel, and furniture, praying among other things, for the reasons set forth in said libel, that the said court would pronounce for the claims in said libel set forth, and would condemn the said propeller and all persons intervening for their interest therein, with costs.

145 That on the said third day of April, eighteen hundred and seventy-one, the Liverpool, New York and Philadelphia Steamship Company appeared in said suit, and entered and filed their claim to the said steamship, and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of twenty thousand dollars, according to the act of Congress in that behalf, passed March 3rd, 1847, and according to the course and practice of said district court.

That on the twenty-second day of April, eighteen hundred and seventy-one, the said claimants of the said steamship filed their answer to the said libel in said district court, praying that the said libel be dismissed and said libellants condemned in costs.

146 That the said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on the sixteenth and twenty-third days of November, 1871, and twenty-seventh day of February, 1872, and said judge, having advised thereon, afterwards, on the third day of June, one thousand eight hundred and seventy-two, made a decree or sentence in said cause, wherein it was in substance adjudged and decreed that the libellants recover against the said steamship City of Washington, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their costs, and that it be referred to a commissioner of this court to ascertain and report the amount of such damages.

147 That under said decree reference was had to Samuel T. Jones, esqr., a commissioner of this court, and pending said reference, and on the 23rd day of June, 1873, by order of the district court, the above-named Theodore C. Robinson, William A. Griffiths, Luther R. Murphy, John Francis, Jeremiah Carney, Michael Neiland, and John Mahoney, were made co-libellants with the persons named in the libel in said cause.

That said commissioner, by his report filed on the third day of September, 1873, reported that the damages sustained by libellants by reason of said collision, with interest thereon to the 27th day of August, 1873, amounted to eighteen thousand and forty-one dollars and sixty-four cents.

148 That on the 15th day of October, 1873, said report was confirmed by said district court, and a final decree was made and pronounced therein, that the libellants recover of the said steamship City of Washington the aforesaid sum of eighteen thousand and forty-one dollars and sixty-four cents, with interest and costs, amounting altogether to the sum of eighteen thousand one hundred and seventy-eight dollars and forty-four cents, and said steamship was condemned therefor, and, in pursuance of the act of Congress passed March 3rd, 1847, summary judgment was entered against the Liverpool, New York and Philadelphia Steamship Company, the principal, and Peter

H. Walsh and John E. Walsh, the sureties, on the bond given on the discharge of the property arrested, for the sum of forty thousand dollars, the amount of their said bond.

149 And that after such final decreee your petitioners duly appealed therefrom to the circuit court of the United States for the eastern district of New York, and the said cause was thereby removed into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court, that afterwards and on the fourth day of March, eighteen hundred and seventy-four, the said circuit court made a final decree in the said cause, whereby it was adjudged and decreed that the said decree of the district court be in all things affirmed, and that the Liverpool, New York & Philadelphia Steamship Company, the appellants, pay to Peter R. Baillee and other libellants and appellees, the sum of eighteen thousand four hundred and ninety dollars and twenty-nine cents, the amount of the decree of the said district

150 court, together with the sum of five hundred and twenty-four dollars ninety cents, being the interest thereon from the time of entry of such decree, and also the said appellees' costs, taxed at the sum of one hundred and sixty-two dollars and twenty-five cents, amounting in all to nineteen thousand one hundred and seventy-seven dollars and forty-four cents, and that said appellees have execution therefor. And it was therein further decreed that a summary judgment be, and the same was, thereby entered against the said The Liverpool, New York and Philadelphia Steamship Company, the principal, and Peter H. Walsh and John E. Walsh, sureties for the sum of thirty-six thousand seven hundred and seven dollars, the amount of the bond and stipulation given on said appeal, and that said appellees have execu-

151 tion to satisfy said decree, which said decree of the said circuit court is, as these appellants are advised, erroneous and ought to be reversed.

Therefore, these appellants appeal from the whole and each and every part of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree made as to the said Supreme Court shall seem just.

Dated New York, April 13th, 1874.

Liverpool, New York and Philadelphia S. S. Co.,
By JOHN G. DALE, *Agent.*

PLATT, GERARD & BUCKLEY,
Proctors for Appellants & Claimants.
J. W. GERARD, *Advocate.*

152 (Endorsed:) U. S. Supreme Court. The Steamship City of Washington, her tackle, &c., The Liverpool, New York and Philadelphia Steamship Company, claimants and appellants, ag'st Peter R. Baillee et al., libellants & appellees. Petition of appeal. Platt, Gerard & Buckley, proctors for cl'm'ts & app'l'ts, 45 William st., N. Y. Filed April 18th, 1874.

153 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMSHIP CITY OF WASHINGTON, HER tackle, apparel, &c., The Liverpool, New York and Philadelphia Steamship Company, claimants & appellants,
vs.
PETER R. BAILLEE, WILLIAM H. MCGEE, JOHN Hobbs, Thomas Aitken, Fred'k V. Boudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, libellants & appellees.

Know all men by these presents that we, Joseph Stuart and James Stuart, are held and firmly bound unto the above-named Peter R. Baillee and others, libellants and appellees, in the sum of twenty-two thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administeators, jointly and severally, firmly by these presents, sealed with our seals, and dated the fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

154 Whereas the above-named The Liverpool, New York and Philadelphia Steamship Company has prosecuted an appe*llee* the Supreme Court of the United States at the city of Washington, District of Columbia, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH STUART. [L. S.]
JAMES STUART. [L. S.]

Sealed & delivered, & taken, & acknowledged, this 15th day of April, 1874, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

155 UNITED STATES OF AMERICA,
Southern District of New York:

Joseph Stuart and James Stuart, being duly sworn, depose and say, and each for himself says, that he resides in the city of New York; that he is worth the sum of forty-four thousand dollars, over and above his just debts and liabilities.

JOSEPH STUART.
JAMES STUART.

Sworn to this 15th day of April, A. D. 1874, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

The foregoing bond is approved as to form of execution and sufficiency of the sureties.

N. Y., April 15th, 1874.

SCUDDER & CARTER,
Lib'l'ts' Proc'rs.

(Endorsed:) U. S. circuit court. The Steamship City of Washington, her tackle, &c., the Liverpool, New York & Phila. S. S. Co., claimants & appellants, vs. Peter R. Baillee & others, respondents & appellees. Bond for damages and costs on appeal. Platt, Gerard & Buckley, 45 William st., N. Y. City. Filed this 18th day of April, 1874. Approved April 22nd, 1874. Chas. L. Benedict.

156 Circuit court of the United States for the eastern district of New York, in the second circuit.

THE STEAMSHIP CITY OF WASHINGTON, HER tackle, apparel, &c., the Liverpool, New York and Philadelphia Steamship Company, claimants & appellants,

vs.

PETER R. BAILLEE, WILLIAM H. MCGEE, JOHN Hobbs, Thomas Aitken, Frederick V. Boudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, libellants and appellees.

By the honorable Charles L. Benedict, judge of the circuit court of the United States for the eastern district of New York.

157 To Peter R. Baillee, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Boudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson.

Whereas the Liverpool, New York and Philadelphia Steamship Company, claimant of the steamship City of Washington, her tackle, apparel, &c., has lately appeal' to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Peter R. Baillee, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Boudier, Mary A. Clark, William A. Griffiths,

158 John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, and Theodore C. Robinson, against the said steamship City of Washington, her tackle, &c., and against her stipulators, and has filed the security required by law; you are therefore hereby cited to appear before said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in the eastern district of New York, in the second circuit, the twenty-second day of April, eighteen hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

CHAS. L. BENEDICT.

(Endorsed:) U. S. circuit court, eastern dist. of New York, in the second circuit. The steamship City of Washington, &c., the Liverpool, New York & Philadelphia S. S. Co., claimants & appellants, vs. Peter R. Baillie et al., libellants & appellees. Citation. Platt, Gerard & Buckley, pro's for cl'm'ts. & app'l'ts. Due service admitted of a copy of the within citation. New York, April 22, 1874. Filed April 22nd, 1874.

159 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from one (1) to 159, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Peter R. Baillie et al., libellants & appellees, vs. The Steamship City of Washington, claimants & appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 12th day of May, A. D. 1874, and of the Independence of the said United States the ninety-eighth.

[SEAL.] SAMUEL T. JONES, *Clerk*,
By EDWIN B. HUSTED, *Deputy*.

(Indorsement on cover:) No. 181. The steamship City of Washington, her tackle, &c., the Liverpool, New York and Philadelphia Steamship Company, appellants, vs. Peter R. Baillie, William H. McGee, John Hobbs, Thomas Aitken, Frederick V. Boudier, Mary A. Clark, William A. Griffiths, John Mahoney, John Francis, Jeremiah Carney, Michael Neiland, Luther R. Murphy, & Theodore C. Robinson. E. New York C. C. U. S. Filed 21st May, 1874.

Supreme Court,

OF THE UNITED STATES.

No. 181.

THE STEAMSHIP "CITY OF WASHINGTON," HER TACKLE, &c., THE LIVERPOOL, N. Y. AND PHILADELPHIA STEAMSHIP CO.,
Claimants, Appellants,

vs.

PETER R. BAILLIE, WILLIAM H. McGEE, and others,
Libellants, Appellees.

Statement and Points for Appellants.

STATEMENT.

This case comes here on appeal from a judgment rendered in the Circuit Court of the United States for the Eastern District of New York, the trial having been originally had in November, 1871, and a decision having been made by Judge Benedict in the District Court of the Eastern District of New York in favor of the libellants; which decision

was affirmed on appeal to said Circuit Court; and is now here on appeal from the latter court.

The following facts may be taken as established from the evidence on both sides:

1st. The collision occurred in the ocean at midnight, about 270 miles east of Sandy Hook, on the 28th of March, 1871, the libellants' pilot schooner being sunk by coming in collision with the bow of the claimants' steamer.

2d. *Wind.*—The wind was *northwest by north* (fols. 24, 28, 101); it was blowing a *good stiff, strong breeze;* it was *puffy* (fols. 33, 69, 82), or of an intermitting nature; there was some *swell* on, and the steamer rose and fell with it (fol. 48).

3d. *As to the darkness of the night.*—That it was a *darkish, squally night* (fols. 35, 40, 42, 65, 69, 109), but no fog. Snowing, with snow squalls (fol. 28).

4th. *First position of the vessels.*—The libellants' pilot schooner was lying to, looking for vessels and waiting for employment as pilot, and she bore *north* from the steamer when first sighted, the steamer's true course for her voyage being west by north. (Taafe, fol. 63).

5th. *Second position of the vessels.*—After sighting, the schooner's course was changed into one *southwest* (fols. 28, 73), and so running on a *starboard* tack up to the time of the collision (Baillie, fol. 31; Jones, fol. 108). Before the collision, the schooner had dropped from her port side her yawl, with pilot,

for boarding, who made for the steamer's starboard side light.

6th. The steamer, upon sighting the schooner, changed her course by porting her helm so as to approach the schooner (fols. 42, 102)—the usual manœuvre—the steamer's course being thus altered from *west by north* to *north by west* (Jones, fol. 102), she still keeping the schooner off her starboard bow.

7th. *Lights.*—The steamer had the usual lights. It is established, and not disputed, that the schooner *did not carry the regulation masthead light*, and showed no light by which the steamer could know of her whereabouts, except the occasional flash-light (fols. 41, 42, 102, 106). Captain Jones says (fol. 103) that even the flash-light was at long intervals; and when the yawl left the schooner, she ceased to burn her flash-lights (103).

8th. The actual collision that ensued arose from the impact or collision of the steamer's bows with the port side of the schooner, which latter filled and sunk in about 15 minutes after the striking. The yawl dispatched from the schooner with the boarding pilot, was at the time of the collision about boarding on the starboard side of the steamer, where was the ladder and usual side light placed for the purpose. The steamer, as appellants maintain, was entirely or almost at complete rest, and the schooner was in the act of crossing the steamer's bows on her starboard tack, instead of running down under the steamer's lee (on the steamer's starboard side), which, as appellants claim to be shown by the evidence on both sides, was the usual and understood rule of

navigation and manœuvre under the circumstances, and which the steamer relied on. The starboarding of the helm by the steamer (charged in the libel) was not done until the schooner was on to the steamer, and it was only done so as to make, if possible, a glancing instead of a full blow, and had no effect any way, as the steamer had no perceptible headway. The libellants' witnesses claim they expected to clear the steamer's bow by half a ship's length. Their miscalculation caused the catastrophe, as also, as appellants claim, the deficiency of the schooner's lights, and her violation of the above rule of navigation. The colliding blow was not made by the steamer, but by the schooner, through the effect of her improper handling and the force of the wind, she being driven down on the steamer, which was rising or falling with the sea.

POINTS.

1st Point.—The schooner was in fault, and the sole, culpable cause of the collision.

Under the circumstances of this case, the schooner had no such rights and privileges as a sailing vessel pursuing a regular voyage has, as against a vessel under steam. She was bound so to approach the steamer and put the pilot on board, as not to embarrass the steamer in her voyage, or risk a collision, and she is chargeable with fault if she neglected that duty.

The navigation, as between the two vessels, was controlled by the *schooner*, who was in

action, and could move where or how she chose, in the full aspect of the steamer's lights and position. The steamer was at comparative rest, with no steering power.

Baillie, the schooner's owner (f. 33), says that the wind was such that he could easily navigate his vessel, and had her under thorough control and management (f. 28).

The schooner was the "*following*" vessel.

2d Point.—As in considering a case of this nature there will always be more or less discrepancy of *detail* in the statements of various witnesses testifying to the same *general facts*, such discrepancies, in minute matters, where there is corroboration as to the *main general facts*, should tend, in the judicial mind, to establish the truth of the testimony in which such differences occur, rather than to cause it to be reviewed with suspicion.

They tend to show that there has been no confederation or rehearsing of testimony, and that each witness is testifying according to his own *personal recollection*. Thus, for example, it is almost impossible, after the lapse of several months, that several witnesses should testify in perfect and minute accord as to the precise movements of engines of a steamer at certain times and at certain intervals, or as to the precise times or intervals of the movements of the helm, or as to the exact positions of the vessel at different times as regards the compass.

All the Court can reasonably require, to establish certain important facts, will be a *general harmony and consistency* of the testimony of the divers witnesses as to such facts. Such testimony is much strengthened if there be corroboration from the *internal evidence and conceded facts* in the case.

In this connection, the effort at perfect unanimity on the part of the libellants' witnesses, as leading them into self-contradiction, is noticeable. *For example, Conrey* says (fols. 97, 292) that he saw the steamer's starboard side pilot-light in her main rigging, when he left the schooner in the yawl, and that he had it in view; though, afterwards (fols. 97–98), he *takes it back* when he saw he was contradicting his co-witnesses.

Maghee says (fol. 82) that the schooner was past the steamer's line of direction when *he left in the yawl*, but he *says he saw the green* light (fol. 70); this would have been *impossible.* In this also he contradicts Baillie, who claims that the schooner was on steamer's port bow when the yawl left (fol. 33). Another evident erroneous statement on the part of libellants' witnesses is the statement that they saw the steamer's *port-hole lights* in passenger rooms before the collision.

Capt. Jones, of the steamer, states that *all such lights were out* at 11 o'clock, and none such were burning that night after the said hour (fol. 108).

3rd Point.—Looking at the testimony that is *without dispute or contradiction* in the case, it is evident that the schooner was guilty of *three grave errors of manœuvre and navigation* which were the *immediate causes of the collision, and which should be fatal to her claim to recover for any damages resulting from the collision.*

These are:

1st. *That she had no mast-head light by which her position or movements could be ascertained, as required by law.*

2d. *That she endeavored to cross the bow of the steamer* when it was entirely unnecessary to do so; when, under the circumstances and the state of the wind, it was *improbable* that she *could or would* do so; and when, under *any* circumstances, such a course *was a dangerous and unusual one.*

3d. That the said schooner violated a well known and established rule of navigation as to the course the schooner should have taken, known to all pilots and navigators, and *on the observance of which the steamer properly relied* That rule is explicitly laid down by the testimony of Atkins (*libellants'* expert witness), (folio 100), to the effect that *if a vessel is on her starboard tack she must direct her course on the lee side of the steamer* (also Jones, folios 109, 106).

It is to be remembered that the schooner *was not on any voyage,* but following the steamer,

and so should have kept out of the way of the steamer while placing her pilot on board.

She made and controlled the navigation, and had no true or regular course.

The above three positions will be considered in the following points, viz.:

4th Point.—The pilot schooner was guilty of a radical fault and extreme negligence in not having *a proper mast-head light as required by law.*

This law may be found in 13th vol. U. S. Statutes at Large, p. 50, Art. 8, Law of April 9, 1864, and is as follows:

"Sailing *pilot* vessels shall not carry the lights required for other sailing vessels, *but shall carry a white light at the mast-head visible all around the horizon, and shall also exhibit a flare-up light every fifteen minutes.*"

Art. 20 of said Act makes the carrying of such a light *peremptory*, and states: "*That nothing in the rules shall exonerate a vessel from the consequences of any neglect to carry lights or signals.*"

There is *no doubt whatever* that the schooner had *no such light.* It is testified to *positively* by Thwaites (fol. 41), Taft (fol. 63), and Jones (fols. 102, 103). The only light the schooner showed was an occasional flash-light; and on the collision Capt. Jones observed a light on her fore bitts on deck, concealed by the bulwarks. If

libellants *had had* a mast-head light they, *of course*, would have contradicted the above testimony, which *they did not attempt to do ;* and the Court says it was a conceded fact (fol. 117). Capt. Jones says they even ceased to show the flash-light about the time the yawl left the schooner (fol. 103). Taafe says he only saw the flash-light once (fol. 63). Capt. Jones says she had no position light to indicate her position (fols. 103, 104). This omission of a proper guiding light, under the then state of weather, was, without doubt, one of *the radical causes of the disaster*, as it was impossible for the steamer to guide her movements with reference to the position or movements of the schooner, and of course thereupon relied upon the *general rule* above quoted, and particularly set forth *infra*, 6th Point, that a pilot vessel on the *starboard tack should go around on the lee side* of the steamer.

5th Point.—The schooner committed another *radical fault* in endeavoring, under the circumstances, *to cross the bows of the steamer.* This is testified to as an actual cause of the collision (Thwaites, fol. 54 ; Jones, fol. 108). Such a course, under *any* circumstances, would have involved risk, and is unusual ; and, under the then circumstances, and the state of the wind, was *peculiarly dangerous*, and not only unnecessary, but one which no vessel rightly handled

would have taken. Capt. Jones properly says (fol. 108) : "*It is a first principle at sea never to cross the bows of anything else.*" The natural course would have been for the schooner to have moved with the wind around *the lee side of the steamer* rather than to make a difficult and uncertain stretch, exposed as she was to be left in the lurch by the intermitting wind, or to be driven down by it to leeward upon the bows of the steamer.

Baillie says (fol. 33) : "The schooner moved just as the puffs would strike her. We would go ahead sometimes, and then *loiter.*" His calculation was that he would *shave the steamer "by half a length"* (fols. 28, 79)—*a nice and close navigation for a dark night and a puffy wind!* He also says (fol. 37) there was plenty of sea room, but he did not change his helm and come down on the starboard side of the steamer, because he wanted to give his yawl time to get on the ship.

We claim, therefore, that such a navigation of his vessel was not only unusual, but, under the circumstances, highly *imprudent* and *dangerous*, especially as there was a safer and more natural and easy course to pursue.

6th Point.—A third fault of navigation committed by the schooner was her neglect to comply with the known rule of navigation, which is testified to specifically by *libellants' own witness*, the pilot *Atkins* (fols. 99, 100). That rule is, he

states, " *that if you are on the starboard tack, you put your helm up and go round on the starboard or lee side ; if on the port tack, you do the contrary. It depends entirely on the tack.*" (Also Jones, fols. 106, 108, 109.)

Now, there is no doubt this schooner was on the starboard tack. (*Vide* Baillie, fols. 24, 31 ; Maghee, fol. 69 ; Baudier, fol. 92 ; Jones, fol. 108.)

It is testified to by both sides without contradiction.

The schooner being, therefore, on the starboard tack, we were entitled to rely, and did rely, on the schooner making the prescribed *manœuvre consequent upon her position.* (Capt. Jones, fols. 106, 108, 109.)

Captain Jones, of the steamer, relied therefore on her being and keeping to the starboard or lee of the steamer, and acted on that reliance (fol. 109). If the schooner had followed the rule, any collision would have been *impossible.*

Capt. Jones is asked (fol. 326), " Is that the usual manœuvre ? " A. " Yes, sir ; any sailor would do that, whether he is a pilot or not." * * * At fol. 106 he states " That he considered that the schooner was on his starboard and would remain there." That is, he acted on his knowledge of the rule and his reliance that it would be carried out by the other party. This regulated his movements.

7th Point.—There is discrepancy and contradiction in the libellants' testimony as to the position of the schooner soon before the collision and when the yawl left the schooner.

Libellant (f. 32) says he was directly ahead of the steamer when she starboarded and the crash came, and that the *yawl was abreast of the steamer*. In another place (f. 34) he says when he dropped his yawl *he was across* the steamer's bow.

Some of the libellants' witnesses say she was past the steamer's bow; others say (as Maghee, fol. 69) that they saw the green starboard light and the side-ladder light of the steamer when (fol. 70) they left the schooner.

Griffiths says (fol. 94) that when the steamer starboarded the schooner was off her *port* bow; that the steamer was going three knots.

See also Conrey's contradictory testimony (fols. 97, 98), referred to *ante*, in Point 2d.

Thwaite, Taafe and Jones, claimants' witnesses, agree in saying that just previous to the collision the schooner's sails were over the steamer's *starboard* bow (fols. 41, 44); Jones says she was always off the steamer's starboard bow, also (fol. 52); and Jones says (fol. 103) when the yawl left the schooner she was two points or more on the steamer's *starboard* bow. Taafe says when they struck the schooner's sails were on the starboard bow (fol. 63). Thwaite (fol. 44), that the schooner was never on the steamer's port bow.

Considering the *discrepancies and contradictions* of libellants' witnesses, and the *unqualified statements* of claimants' witnesses, the weight of

testimony establishes the fact, that before and at the time the yawl was launched, and the yawl light seen, the *schooner was off the starboard bow of the steamer*, and the steamer was *bound to presume she would keep there.*

The steamer's gangway light being in the starboard rigging, on the lee side (fol. 48), it is more natural that the yawl should have been dropped on the starboard side. McGee, the pilot, says "We pulled towards the steamer on her starboard side" (fol. 75).

8th Point.—*The steamer was not in fault.*

It is evident from the testimony that the steamer had ceased all *forward motion* at the time of collision, or that her movement was almost *imperceptible.* It is true the libellants' witnesses (who could not possibly have judged of her speed in her then position as to their position) assert that she was going at three or four knots an hour. Appellants' witnesses not only contradict them flatly, and say that the *steamers, headway was stopped* (fols. 46, 66, 104), but give *facts* which are evidence to the main fact, that her course was stopped.

In opposition to the statements of the libellants' witnesses, moreover, *we have the following facts:*

a. The slowing and backing movements of the engine long before the collision, as specially

testified to by appellants' witnesses, who say that from *full* speed the ship could be stopped in, at the most, two minutes (fol. 53); the engineer thinks one minute (fol. 58). Taafe says (fol. 66) the steamer's engines were going astern at the time of the collision. Jones (fol. 104) says, to the best of his belief, his steamer was perfectly still.

b. The fact that the yawl maintained her position by the steamer's side, although a *considerable swell* was on, and an *adverse wind* (fol. 76).

c. The fact that *the yawl, immediately the blow was struck, rowed up to the scene of disaster, at the steamer's bows* (fol. 47), *without trouble, and the two men, or boys, remained on their oars in front of the steamer's bows without being attached to anything* (fol. 78), and by the fact *that everything was, as Maghee* (fol. 78) *testifies*—libellants' witness—*at a* "STAND-STILL," when he pulled up to the steamer's bows!

Now, if this steamer had been going at any perceptible speed, is it not preposterous to suppose *that the collision with this little schooner would have arrested it?* Is it not to be also supposed that if the steamer *had been in actual motion*, she would have *cut down and passed over* the schooner, instead of merely *indenting* her, and would also have *swamped the yawl?*

The libellant, too, says (fol. 27) that after the collision he went down into the cabin of the schooner.

d. That the steamer had no forward motion, which libellants claim she had, is also clearly shown by the fact that the *white water from her stern came forward to, or nearly to, the mizzen rigging, as testified to by all sides* (fols. 79, 107).

Maghee, libellants' witness, frankly testifies that no vessel that is going *ahead* can throw white water from the stern forward (fol. 79).

Taafe says (fol. 66), "We were going astern, or slightly weighing astern."

Even if, according to libellants' view, there had been a very slight forward movement of the steamer, still *that*, as it appears by the testimony of the libellants' witnesses, is not unusual. Mosly, the pilot, says (fol. 84) that one cannot make a steamer perfectly still. We deny, however, that there was a sensible or active motion at the time of collision.

Supposing that the steamer *had* been going at the rate of speed claimed by libellants. Her movements and speed were perceptible. Why not wait until her speed was entirely checked? *Was it not most culpable and negligent for the schooner to attempt to cross her bows*—under the circumstances—*whether there was any custom or not? Particularly when other courses were open?* It was blindly running into danger.

9th F

(1.

[illegible] driven down upon the steamer's bows, which, as *Thwaites* testifies (fol. 48), rose and fell with the swelling of the sea. She may have been *driven to leeward, or drifted down* in a lull of one of *the puffs of wind*, and thereby libellant Baillie's *close shaving calculation to clear our bows by half a ship's length* (fols. 73 and 79) *was disastrously*

determined. Capt. Jones, of the steamer, says the schooner approached him, going *across his bows.* So says Thwaites, second officer (fol. 54).

Jones says (fol. 108): "At sea nobody attempts to cross the bow of another; and in the schooner's case, with the wind northwest and himself coming down southwest, and having approached us, he would have heard my steam-whistle blowing; I blew that when I stopped my engines, as a notice to him that my engines were stopped. Under those circumstances he should have put his helm up and dropped his boat, and then run down under my lee."

This is the only true theory of the collision. It could not have occurred if the schooner had been ahead of the steamer, or on her port side, as some of libellants' witnesses pretend, for in such case *the schooner would have been far away to westward before the blow was struck.*

(2.) As to the alleged fact of *starboarding* our helm just when the schooner was on to the steamer, that was *a natural and proper manœuvre,* under the circumstances; when, as Taafe says (fol. 63), he saw the schooner's *sails right on to him, two points on the starboard bow.*

Capt. Jones (fol. 106) states that it had *no effect any way on the steamer's movement, as she had no headway,* and that at the time the starboarding occurred the collision was inevitable.

Taafe says (fol. 60) the helm was only *starboarded the instant of the collision;* it had no effect whatever, either in avoiding or precipitating the disaster, which was then imminent and unavoidable.

Also says the Officer Taafe (fol. 62), and after the order hard-a-starboard he only could get his wheel six or seven spokes to starboard before the collision.

Captain Jones says (fol. 106) the helm was starboarded after the engines were stopped, he considering that the schooner was on his starboard and would remain there. He also states that the starboarding the helm had *no effect on the ship, as her way was stopped.* So says Taafe (fol. 60): "She hadn't time to answer her starboard helm."

(3.) Moreover, this manœuvre was what the schooner must or should have apprehended (as it was necessary to bring the steamer's *head around so as to proceed on her way course). Therefore it was doubly wrong* in the schooner to have endeavored to cross the steamer's bows. The steamer's true course was west to New York, which the pilot knew, and that her head would not be turned back again towards Europe. She had been veered to the north-half-west to suit the pilot (fols. 109, 110). As to the steamer's port side being the lee side after the collision, if that were so, which is denied by Thwaites (fol. 49), that is accounted for by the fact that the schooner was entangled on the steamer's bowsprit with

sails set, and hung there, and the steamer was acted upon by the momentum of the schooner and the wind, which slewed the bow around (*vide* Jones, fols. 113, 114), and also by the fact that in backing from the schooner after the collision, the steamer's head might have veered around (fol. 112).

As regards this alleged change of the position of the steamer after the collision, libellant's advocate has inferred, from the fact of the ladder being changed from the starboard side of the steamer to the port side after the collision, that the *port* side of the steamer had become the *lee* side instead of the starboard side, and that was consequent upon *the manœuvre of the steamer and the change of her helm;* thereby he claims that the starboarding of the helm had an effect upon the steamer's position, and consequently that our testimony as to the stoppage of the vessel is not supported by the facts. As regards that, Captain Jones gives a very full explanation of how that ladder was changed, and how the position of the steamer, as regards her port side becoming her lee side, might necessarily follow from the collision. The schooner, with all sail set, was going at a fair rate of speed, with a wind at from seven to eight knots an hour giving momentum to the schooner, and driving her on the bowsprit of this steamer, she became entangled with it and hung there. The force of the momentum and the action of the wind on the sails—the schooner being at the very extremity of the steamer—might well cause a change in the position of the

steamer, and her bow would be thrown to port. It can be well understood that momentum of this character, with the wind acting on the sails and the pilot-boat suspended on the very stem, would shift the steamer's head. We know the effect of the wind on the jib when it is desirable to wear the ship or turn a vessel, and we can well imagine that this schooner, with all her sails set, would have such an effect upon the bow of this steamer as to make the diversion in position.

10th Point.—The steamer had a good and sufficient look-out, and observed all the prescribed rules of navigation and of law, the neglect of which on the part of the *schooner* caused the collision. The loss or damage must therefore fall on *her* insurers or owners.

At any rate, there was such negligence on the part of the schooner as would warrant the Court in making an apportionment of the damages.

11th Point.—The schooner having been entirely and solely to blame, the libel should have been dismissed with costs and the judgment below reversed.

Judge Benedict's Opinion below.

There are no particular remarks to be made on his Honor Judge Benedict's opinion, except that his conclusion is considered unwarranted by the facts and evidence in the case, and it is, as appellants suppose, fully answered in the above points. In the latter part of the opinion his Honor assumes, as a logical conclusion, that the steamer could not have been misled by the want of a mast-head light in the pilot schooner, *inasmuch as* the former could see *the light carried by and in the yawl.* That conclusion is not warranted by the reason or fact adduced, *because* the light carried by the yawl could only have shown *one position, i. e.*, the position of the schooner off the steamer's starboard bow when the *yawl started;* and in default *of other showing, we were bound to presume, as shown above, that that position would not be changed to our port side.* We had no right to presume that the schooner intended to cross our bows—we having once seen her yawl light or her flash-light to starboard.

With reference, too, to the burning of these flash-lights, as regards the indication of the position of the schooner, the libellant's advocate has heretofore urged that they were continually burning flash-lights to show the position of the schooner. On the contrary, Captain Jones says (f. 103) that "in their anxiety to get the yawl out of the schooner, they had ceased to burn their flash-lights; they had no lights then, and the night was so dark it was impossible to dis-

tinguish the boat; and I only knew the fact that the yawl had left the schooner by seeing the small lantern that the pilot carries in his hand on the surface of the water."

The Admiralty rule only requires the flash-lights to be burned every 15 minutes. There is nothing in the evidence to show that there was a continual burning of these flash-lights.

As regards the remark in His Honor's opinion that our answer does not specifically set up as the cause of the disaster the want of a mast-head light in the pilot schooner, it may be stated that in admiralty pleading every fact or piece of evidence is not necessarily to be set forth, and pleadings are often hastily drawn before every fact can be ascertained by the pleader.

The answer sufficiently refers to the want of a mast-head light required by the rules of navigation (fols. 62, 63), wherein it is charged that the steamer was misled and deceived as to the position and change of position of said pilot boat, among other things, by neglect and deviation from the usual rules and customs of navigation on the part of those on the schooner, and their want of ordinary care and prudence. It is the custom of Courts of Admiralty to construe pleadings liberally, so as to have them conform to the evidence and the facts.

Judge Woodruff's Opinion.

As to the opinion of His Honor Judge Woodruff (fol. 135), the same misconception of the evidence as to the steamer's knowledge, through flash lights, of the schooner's position, is evident. There is an as-

sumption, also, that the steamer had not stopped her course; that she had done so is endeavored to be shown under above 8th Point.

The Honorable Judge also assumes as proved another fact, viz.: that the pilot boat went on the windward side of the steamer, according to some "*custom.*" No such custom is shown by the evidence, but the contrary is shown under above Point No. 6.

It is also to be remarked that the learned Judge, while sustaining the decree below, in his opinion actually condemns the course pursued by the libellant's vessel in these words (fol. 138): "Left to my own unaided judgment, I should have deemed it an improper risk assumed by the pilot boat, when approaching to place a pilot on board a steamer, to put himself voluntarily and deliberately in the path of the steamer, to then lower her yawl for putting the pilot on board. It would have seemed to me that taking such a position was unnecessary and greatly dangerous." His Honor, however, decides the case in opposition to his own perception and judgment as above, upon the supposed existence of the custom to which he alludes, and which we do not find proved in the case.

Cases in Point.

A sailing vessel which discovers a steamer approaching her at night ought to exhibit a light, or she will be held in fault if a collision occur between her and the steamer.

The Parkersburgh, 5 Blatch., 247.

Where a sailing vessel did not carry the proper lights, so that a steamer was misled—*held*, that on a collision, the sailing vessel was in fault.

The Scotia, 14 Wall, 170.

The case of Sturges *v.* Clough, 21 How. U. S., 451, decides: that where one vessel violates a standing and well-known rule in navigation in her direction and manœuvering as regards another vessel, whereby a collision ensues, the first vessel is held in fault.

JAMES W. GERARD,
Advocate.

PLATT & GERARD,
Proctors for Claimants and Appellants.

U. S. Supreme Court.

THE STEAMSHIP "CITY OF WASHINGTON," THE LIVERPOOL, NEW YORK, AND PHILADELPHIA STEAMSHIP COMPANY.

Claimants and Appellants.

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PETER R. BAILLIE, *et al.*,

Libellants and Appellees.

BRIEF FOR APPELLEE.

HENRY J. SCUDDER,

Advocate for Libellants and Appellees.

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1876

U. S. Supreme Court.

THE STEAMSHIP "CITY OF WASHINGTON," HER TACKLE, &c., THE LIVERPOOL, NEW YORK AND PHILADELPHIA STEAMSHIP CO.,
Claim'ts & App'ts,

vs.

PETER R. BAILLIE, WILLIAM H. MCGEE, *et al.*,
Libel'ts & Appellees.

APPELLEE'S BRIEF.

STATEMENT OF FACTS.

A little before midnight, of March 28th, 1871, the schooner pilot boat "John D. Jones," was in the open sea, about 270 miles eastward of Sandy Hook, looking for vessels to pilot into the port of New York.

The wind had been blowing hard during the day, and was fresh at night, puffy, with squalls of snows at intervals, and between them clear starlight.

The wind was N. W. by N. the schooner on the starboad tack, heading about west by north. The schooner carried a head-light at the bitts, and burned flash-lights very often.

On board the schooner were four pilots and a crew of six men,—ten in all.

At the time of making the steamer, one pilot was on deck in command, and one man on deck as lookout; both were, in fact, lookouts. The other pilots were below, but not turned in.

The sea was heavy for the schooner, but easy for the steamer.

The schooner was staunch but small, about 100 tons. At the time first stated above the steamer City of Washington was on her way to the port of New York, heading W. by N. for Sandy Hook and within five miles of the schooner.

The steamer wanted a pilot, she had her proper lights set. The steamer was 356 feet long and over 2,000 tons burden. The steamer was going at full speed, 10½ knots, when the flash light of the schooner was first seen by those on the steamer.

The relative position of the vessels at the time the schooner made the steamer was this—each heading in nearly the same direction, but the steamer South by East from the schooner and on the port quarter of the latter.

Immediately upon making the steamer, the schooner showed her flash light and continued rapidly to show it, until the vessels were within a short distance of each other.

The steamer answered the flash lights by blue lights, thus indicating her recognition of the schooner's whereabouts and character and desire for a pilot from on board her.

After the showing of these characteristic lights, the vessels quickly changed their respective courses.

The schooner bore away to get at the steamer. The steamer ported her helm to close in with the schooner. When the vessels were from 700 to 1,000 feet apart, their relative position had reached this : The schooner heading about south-west, the steamer about north ; the schooner then crossing the steamer's bow.

At this juncture the schooner dropped her yawl with a pilot and two men in to row him to the steamer. The pilot carried a hand lantern, and this was distinctly visible from the steamer at the time he was lowered, and at all times after.

The starboard side of the steamer was then her lee side, and there provision was made for taking the pilot on board.

It is the custom of the sea for pilot boats, when making vessels to leeward wanting their services, to run down to them, stand across their bows, and put their pilot aboard in so doing. The pilot in this instance had brought in the City of Washington several times prior to the date mentioned. The schooner was heading south-west when she dropped the yawl.

The steamer was then heading nearly north.

The steamer starboarded her helm two to three minutes before the collision.

The schooner ported her helm the instant collision was inevitable. The steamer struck the schooner an angular blow, inclining from a point abaft the mainmast, forwards to the mainmast, her bowsprit carrying away the mainmast. The schooner "hung like a toy on the bowsprit of the steamer." The steamer backed out of the schooner, and the latter sunk in a few minutes.

The pilot was then taken aboard the steamer on her port side, that then being the lee side.

POINTS.

1st Point.—The cause of this disaster is obvious, and its explanation simple.

The steamer was under full headway for her port; she needed a pilot, and finding one, bore up to get him. When he was lowered away, with his small hand lantern, the eyes of the steamer's officers were upon him and not on his schooner. What the lookouts on the steamer may have done or said no one knows, for neither is examined, nor any word or sign furnished by either.

When the yawl had gained to within a few feet of the ladder, and light placed for the pilot, the captain of the steamer, concluding the pilot is certain to board, orders his helm to starboard, *to regain as quickly as possible his course for the port of destination.* His order is given in utter heedlessness of the little schooner, and it is this order that does the mischief.

The desire for a quick passage dominates at the instant, and excludes considerations that might have active control in other conditions.

The fault was purely on the part of the steamer, and in no manner contributed to, in a legal sense, by the schooner.

2d Point.—The incidents and manœuvres from the time the schooner makes the steamer to her destruction by the latter are few; and, con-

sidered in order, present a convincing argument against the steamer.

The moment the steamer is made by the pilot boat the latter shows her flash-light; this is answered by the blue light of the steamer, and these lights are displayed repeatedly in alternation. The testimony of claimants concurs in this behalf with that of the libellants. The second officer of the steamer signaled the schooner before his captain got on deck; and the captain says: "after he reached the bridge he burned several blue lights, to which answers were made by flash-lights."

The boats were not over five miles apart, and with their united speed would meet in twenty-two minutes. Hence the interval between lights can scarcely exceed four minutes. Thus these vessels conversed in the language of the sea: the flash-light saying, "I am a pilot;" the blue light answering, "I recognize you, and need your services." Again the flash-light, "I am here;" and the blue light, "I know it, and am coming for you." And so along until they are so near as to permit the launching of the yawl to convey to the steamer its needed guide.

In approaching, the courses of the vessels are changed; the schooner bears away from the N. N. W. to S. W. The steamer, on the contrary, changes from W. by N. to about north. The purpose of each is to get as near the other as possible to complete the transfer of the pilot. The steamer is large; the schooner a mere toy in comparison. Can a plainer duty spring out of the relations of facts than the one imposing upon the steamer, in this case, the

necessity of absolute cessation of motion, so far as human power on board her can accomplish that condition, until she has secured her pilot, and knows the schooner is out of her way?

The approach of the schooner is as clearly made known as the position of a light house can be; her flash light indicates her exact position; her light at the bitts continues the information; it is clear from her course she intends to cross the steamer's bows; it is the custom of pilot boats to do so, and yet the steamer keeps under headway—reduced it is true—but enough with her great weight to crush and sink the slight schooner.

Clearly the steamer erred in her rate of speed and erred in starboarding her helm: she was thus doubly at fault.

3d Point.—There can be no doubt of the continued motion of the steamer. Those on the schooner see her coming down like a "black mountain, the white water under her bow." The pilot in the yawl observes her speed and foreseeing the catastrophy that follows, exerts himself to prevent it by shouting to the steamer to back water. The second officer of the steamer confesses to her headway. The quarter-master admits it in saying we were "*just about getting sternway on her.*" The side of the schooner was crushed "way into the cabin," her mainmast carried away by the steamer's bowsprit. These two conditions establish motion by the steamer, for the stern of the steamer struck abaft the mainmast and had she been motionless and the schooner alone having way on, it is impossible

to conceive from their relative bearings at the time, of any damage to the schooner more serious than breaking of rigging and, possibly, of a spar.

Again Jones, captain of the steamer, testifies: "I didn't attempt to back off till the lives were saved." If the steamer had been under the orders alleged by the captain and second officer, she would have been backing at the instant of collision, and so would have withdrawn from the schooner at once, or pulled the schooner toward her had the rigging of the schooner entangled with the head-gear of the steamer.

The schooner, however, rolled over to windward, and was pushed through the water against the wind and sea, conclusively showing motion in the steamer.

Why was the order to starboard given by the captain of the steamer, if she had no headway?

If the steamer, at the time of this order, was under sternway, then, upon the captain's statement, the order was a wild and foolish one, for in answer to an interrogatory as to the effect of starboarding while backing, he flippantly responds: "That is a thing we should like to find out very much; *as a rule, she goes the way you don't want her to.*"

This witness received the merited rebuke of a sharp question by the Court; but, even under this, he maintained his evasive character.

The steamer was unquestionably in motion at the time of the order to starboard. The weight of testimony clearly establishes it. The learned

judge, who presided at the trial, and saw and heard the witnesses, found it as a fact, and the learned justice, who heard the case upon appeal, concurred in the finding upon this point.

4th Point.—The answer admits the starboarding by the steamer just before the collision, and the evidence, in this behalf, sustains the answer. This manœuvre was an error, and the cause of the disaster. Once having made the schooner, and learned she was approaching, it was the duty of the steamer to make her the subject of most diligent and prudent watch, to do nothing that could possibly endanger, and everything that would ensure her safety.

The schooner was on a special mission. She was the bearer of relief to the steamer. She was obeying an established and understood rule of navigation, particularly applicable to vessels of her character, in crossing the steamer's bows, and had the "*right of way*" in so doing until she had completed her work.

The officers of the steamer knew the schooner was crossing their bows—knew she was right upon them when she lowered away her yawl for their benefit, could see her lights and sails, and were bound to regard all her future movements with the most scrupulous care. They were held to a knowledge of the usage in cases of putting a pilot on a steamer, and undoubtedly possessed it, however the witness Jones may sneeringly assert "first principles" at sea.

In their culpable eagerness to make a quick trip these officers directed their attention away

from the schooner and riveted it upon the yawl. They cared more for the single pilot in the cockle-shell than for the many lives in the schooner. The one was necessary to the furtherance of their interests; the other must give way to those interests.

In this connection, an inquiry as to the steamer's lookouts is not impertinent. The rule requiring lookouts and their production and version of the circumstances of a collision, lacks observance in this case. Every fair and reasonable conclusion against the claimants and appellants, dependent upon their testimony, is inferable from their non-production. What word they passed as to the position of the schooner, her progress, the danger of her situation, the answer to their reports, the orders given, the motion of the steamer, the varied and numerous facts we usually derive from the lookout, are wanting here. The appellants were chargeable with their production and must bear the burden of their silence. That burden is, that there was a reason for not calling them, and that reason is in the interest of the appellants.

5th Point.—The schooner violated no rule applicable to pilot-boats in crossing the steamer's bow after dropping her yawl. Pilot-boats have their own customs and rules, and these are thoroughly understood by sea-going vessels requiring their aid. Constructed with reference to speed and easy handling, these "birds of the sea" ply their avocation with a celerity and ready obedience to the necessity of the occasion that cannot be spared or abridged by the cupidity of commerce or the personal ambition of its

servants. The pilots pursuit at sea is one of incessant watch and constant risk. He is charged with the gravest responsibility. As a counterpart, he possesses privileges with which none can interfere. Therefore, it comes that certain usages have grown up and entrenched the pilot. Among these is his method of boarding vessels.

This custom is so thoroughly established by the testimony in the case that the learned court below, while repelled by its apparent danger, sanctioned it as a rule. In fact, if the custom of crossing the bow did not exist, hours would elapse before the pilot could be put upon the steamer. If the pilot schooner must bear away, run to the leeward, then haul up, and so put her man aboard, the impatienc of the earnest sailor would overcome his prudence and the perils of commerce be greatly increased.

Leaving the reflection that justifies the custom, it is sufficient that it is proven and exists.

It is possible that the partially ambiguous language of the witness Aitken may be seized as contradictory of the general usuage. Considered even briefly, it conforms to the testimony of the other witnesses. Obviously he means to *go around the steamer*, not to wear directly under her bow, and that after lowering away his yawl, for wearing then would bring steamer, yawl and schooner into general confusion and conflict.

It is enough, however, that Mr. Aitken tells the court "*we generally cross the steamer's bows.*" All the pilots concur in this and nobody disputes it. Jones, of the steamer simply criticises it. The value of this criticism may be

estimated by the slightest examination of his testimony, its effrontery and disrespect to court and counsel.

6th Point.—The absence of a masthead light on the schooner in no way contributed to the collision. The schooner's position was understood, and that is enough to direct the actions of the other vessel. The forward light at the bitts was visible. The little hand lantern could be seen. The schooner's sails were seen; and all this in season to avoid the disaster had the steamer's people given proper attention. There is no rule justifying carlessness on a steamer because a sailing vessel does not comply with some regulation.

Upon the subject of the duty of the steamer in her relation to the schooner, although the latter had no masthead light, the principle established by this court is plain; that the steamer from the moment she made the schooner must watch with the highest diligence her course and movements in order to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming in contact.

The Carroll, 8 Wall, 302.
The Lucille, 15 Wall, 676.

Lastly.—The decree of the court below should be affirmed, with costs.

HENRY J. SCUDDER,
Of Counsel for Appellees.